

FILE COPY

**STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD**

**IN THE MATTER OF THE DISCIPLINARY
PROCEEDINGS AGAINST:**

JOYCE E. ANDERSON,

RESPONDENT.

**: FINAL DECISION AND ORDER
: 94 REB 065, 95 REB 040
: 95 REB 154, 95 REB 309
: 96 REB 139, 96 REB 160
: 97 REB 084
: L 59803263 REB**

The parties to this action for the purpose of Wis. Stats. sec. 227.53 are:

Joyce E. Anderson
1819 11th Avenue
Monroe, WI 53566

Wisconsin Real Estate Board
P.O. Box 8935
Madison, WI 53708-8935

Wisconsin Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final disposition of this matter, subject to the approval of the Real Estate Board ("Board"). The Board has reviewed the Stipulation and considers it acceptable.

Accordingly, the Board adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. **Joyce E. Anderson**, ("Anderson"), 1819 11th Avenue, Monroe, Wisconsin 53566, is and was at all times relevant to the facts set forth herein, a real estate broker licensed to practice in Wisconsin pursuant to license #31263, originally granted to her on February 20, 1984. Anderson does business under the name of Sunshine Realty.

2. Anderson was previously disciplined by the Real Estate Board in cases 92 REB 022 and 92 REB 027. A copy of the Final Decision and Order in those matters is attached hereto as **Exhibit A**.

INVESTIGATION FILE 97 REB 084

3. On or about March 17, 1997 Anderson obtained keys to a private residence located in Monroe, Wisconsin owned and occupied by Joyce Schellenger. Anderson obtained these keys from the listing broker Town Square Realty of Monroe, Wisconsin for the purpose of showing the Schellenger residence to a potential purchaser.

4. Anderson, without the permission or knowledge of the listing broker, gave the keys to a potential purchaser named Kim Kroetz. Kroetz went to the Schellenger home unaccompanied by Anderson and opened the front door of the home and gained entry.

5. Schellenger was at home at the time and immediately became concerned and upset to find that persons other than her agent or subagents had been given keys to her residence for the purpose of gaining entry.

INVESTIGATION FILE 95 REB 040

6. During a 1994-1995 compliance audit conducted by the Division of Enforcement on Anderson's real estate trust account and real estate records, Anderson was informed that she was failing to meet the record keeping requirements of Section RL 18.13 Wis. Adm., Code. At that time a follow up letter was sent to Anderson informing her of the bookkeeping rules and sample forms to bring her into compliance. A copy of this letter, dated May 9, 1995, is attached hereto as **Exhibit B** and incorporated herein as if set forth at length.

7. The audit staff found the following violations relating to completion of forms by Anderson and Anderson's staff:

a) Illegible documents, including the listing contract in the Mauerman/Dietrich transaction; Offer to Purchase in Hardel/Nicklelt matter; Offer to Purchase in Schneider transaction;

b) Inadequate drafting of contingencies, including the Offer to Purchase drafted in the Matzke/Everson transaction;

c) Commission collected at closing not in agreement with the written contract in several transactions, including Mauerman/Dietrich; Kohl/Prusinski; Norder/Thompson; Ganshert/Robertson; Matzke/Everson; Hardel/Nicklelt.

8. The audit staff performed a trust account bank reconciliation as of March 25, 1994, and found a failure to maintain adequate funds in the trust account due to a negative broker fund balance.

9. On or about February 2, 1996 auditors from the Division of Enforcement, Department of Regulation and Licensing, performed a compliance audit of Anderson's real estate records and real estate trust account records.

10. The audit staff determined from this audit that Anderson's real estate trust account records were the subject of the following violations:

a) Section RL18.13(1) Wis. Adm., Code, for failing to maintain an up to date Cash Journal.

b) Section RL18.13(2) Wis. Adm., Code, for failing to maintain an up to date Ledger;

c) Section RL18.13(3) Wis. Adm., Code, for failing to reconcile the real estate trust account in writing each month;

d) Section RL18.13(4) Wis. Adm., Code, for failing to perform monthly trial balances;

e) Section RL18.13(5) Wis. Adm., Code, for failing to validate the trust account records;

f) Sections RL18.10 and 24.15 Wis. Adm., Code, for overdrafting her real estate trust account.

11. During the course of the February 1996 audit, Anderson was issued a Department form number 344 informing her of the specific violations in her trust account records. A copy of this form is attached hereto as **Exhibit C** and incorporated herein as if set forth at length.

INVESTIGATION FILE 95 REB 309

12. On or about May 31, 1995, Wayne C. Martin entered into a listing contract with Sunshine Realty, whereby he agreed to pay Sunshine Realty a commission of 5% of the selling price in the event he sold his home during the period of listing. The listing price was \$87,900.00 and the term of the listing was from May 31, 1995 through August 31, 1995.

13. On or about August 9, 1995 Martin was induced to accept a sales price of \$84,000.00 by Anderson, by her representing to Martin that if he accepted that price, she would lower her commission on the sale to 4.5%.

14. The closing on this sale took place on September 14, 1995.

15. At the time of closing, Anderson refused to lower her commission to 4.5% and proceeded to collect a commission of 5%.

16. Martin complained to Anderson and was told by her that he could not force her to reduce the commission because nothing had been placed into writing about the reduction. Martin complained to the Division of Enforcement about this matter.

17. On or about February 8, 1996 Anderson was contacted by investigator Angi Jerney of the Division of Enforcement. Anderson was asked by Investigator Jerney to comment on the complaint of Martin.

18. Anderson admitted to Investigator Jerney that Anderson had verbally represented to Martin that she would lower her commission if Martin accepted the \$84,000.00 offer.

19. Anderson admitted to Investigator Jerney that Anderson later refused to lower her commission to the 4.5% promised Martin. Anderson explained that she would have reduced the commission if Martin had proceeded to purchase property through her agency. However, she refused to lower the commission because Martin proceeded to reinvest his proceeds from the sale in an Illinois property and not in Wisconsin and that Anderson did not have an Illinois license to sell real estate.

INVESTIGATION FILE 95 REB 154

20. On or about October 31, 1994, Robert Schaeffges listed farm property with Sunshine Realty. The listing price was \$345,000.00 and the term of the listing was from October 31, 1994 through March 2, 1995.

21. During the course of negotiations with a potential purchaser, Carl Keesey ("Keesey"), a real estate broker employed by Anderson and supervised by her, drafted a counter-offer dated November 29, 1994 whereby Schaeffges offered to sell the property for \$299,000.00 to Harry F. Espenscheid. This counter was not accepted.

22. Keesey proceeded to draft a December 3, 1994 counter-offer whereby Espenscheid offered to purchase the Schaeffges farm for \$297,000.00.

23. Upon presenting the December 3, 1994 counter to Schaeffges, Keesey represented to Schaeffges that if Schaeffges accepted this price, Sunshine Realty would lower its commission by \$2,000.00. Nothing regarding this representation was placed into writing.

24. In reliance upon Keesey's representation that Sunshine Realty would lower its commission, Schaeffges accepted Espenscheid's offer.

25. Anderson later refused to lower the commission and informed Schaeffges that since nothing was placed into writing regarding this representation, there was nothing he could do about it.

INVESTIGATION FILE 94 REB 065

26. On or about March 26, 1994 Anderson contacted Realty World-Amacher Realty in Monroe, Wisconsin ("Amacher"), to schedule an appointment to show the home of Gerri Neuman which was listed by Amacher. She was given permission to show the home at 11:00 A.M. that day.

27. Anderson proceeded to call the seller of the home directly and cancel that appointment and scheduled one for 10:00 A.M. without going through Amacher Realty.

28. Anderson's employee, Keesey, appeared at the seller's residence at approximately 1:15 P.M. on March 26, 1994 without an appointment and walked into the home uninvited and without the permission of the seller or Amacher Realty.

29. In a transaction involving the farm of Charles R. Cook and Mary H. Cook, Anderson and her employee Keesey had numerous direct contacts with the sellers regarding negotiations of a purchase contract, all without the consent of Amacher.

30. Amacher complained to the Grievance Committee of the Green County Board of Realtors regarding the activities of Anderson. The Grievance Committee proceeded to hold a disciplinary proceeding and found that Anderson and Keesey had made unauthorized contacts with sellers who were under exclusive listing contracts with Amacher.

INVESTIGATION FILE 96 REB 139

31. On or about January 29, 1996 Amacher purchased property at N2155 County K, Monroe, Wisconsin and Anderson handled the closing and received a sales commission.

32. At closing \$975.00 was placed into escrow for the purpose of paying for clean up of the property after closing.

33. The escrow agreement included Anderson holding the \$975.00 until the property had been cleaned and all work related to that project had been completed.

34. Anderson released the funds in escrow prior to the time the work was complete and without permission of Amacher.

INVESTIGATION FILE 96 REB 160

35. In May of 1996, the Green-Rock County Realtors Association Grievance Committee, Ethics Hearing Panel of the Professional Standards Committee issued Findings of Fact and a Discipline Order regarding activities of Anderson's employee Keesey.

36. The decision found that Keesey, while employed by Anderson:

- a) Concealed pertinent facts regarding a transaction in which he was both listing and selling agent;
- b) Failed to disclose the existence of an accepted offer in a transaction in which he was the listing and selling agent;
- c) Advertised property for sale without a valid listing contract;
- d) Continued a standard of practice that created a great deal of confusion to the parties involved, and failed to live up to the expectations of the industry.

CONCLUSIONS OF LAW

- 1. The Real Estate Board has jurisdiction in the matter pursuant to section 452.14 of the Wisconsin Statutes.
- 2. The Wisconsin Real Estate Board is authorized to enter into the attached Stipulation pursuant to section. 227.44(5) of the Wisconsin Statutes.
- 3. Respondent Joyce E. Anderson has violated the following:

INVESTIGATION FILE 97 REB 084

- a) Section RL 24.025(1) Wis. Adm. Code, and sections 452.133(1)(b) and 452.14(3)(i) Wis. Stats., by failing to diligently exercise reasonable skill and care in providing brokerage services to all parties, thereby demonstrating incompetency to act as a broker in a manner which safeguards the interests of the public.

INVESTIGATION FILE 95 REB 040

- b) Sections RL 24.03(2)(c) and 24.08 Wis. Adm. Code, and sections 452.133(1)(b) and 452.14(3)(i) Wis. Stats., by failing to place all commitments of the parties into appropriate written documents using Department approved forms and by engaging in oral amendments to listing contracts, failing to diligently exercise reasonable skill and care in providing brokerage services to all parties, thereby demonstrating incompetency to act as a broker in a manner which safeguards the interests of the public.
- c) Sections RL 18.13(1), 18.13(2), 18.13(3), 18.13(4), 18.13(5) Wis. Adm. Code, and section 452.14(3)(i) Wis. Stats., by failing to maintain and be responsible for a bookkeeping system required by these administrative rules, thereby demonstrating incompetency to act as a broker in a manner which safeguards the interests of the public.
- d) Sections RL 18.10 and 24.10 Wis. Adm. Code, and section 452.14(3)(i) Wis. Stats., by failing to maintain sufficient funds in her real estate trust account, thereby

demonstrating incompetency to act as a broker in a manner which safeguards the interests of the public.

INVESTIGATION FILE 95 REB 309

e) Sections RL 24.03(2)(b) and 24.08 Wis. Adm. Code, and sections 452.133(1)(a), 452.133(2)(a) and 452.14(3)(c) Wis. Stats., by failing to diligently exercise reasonable skill and care in providing brokerage services to all parties, by failing to loyally represent her client's interests and by making a false promise of a character such as to influence, persuade or induce the seller to his or her injury or damage.

INVESTIGATION FILE 95 REB 154

f) Section RL 17.08(1) Wis. Adm. Code, and section 452.14(3)(i) Wis. Stats., by failing to provide appropriate supervision of Keesey in the above described transaction. Anderson is responsible for the acts of Keesey pursuant to section 452.12(3) of the Wisconsin Statutes.

INVESTIGATION FILE 94 REB 065

g) Sections RL 17.08(1), 24.03(2)(b), 24.03(2)(c) and 24.13(5) Wis. Adm. Code, and section 452.14(3)(i) Wis. Stats., by failing to provide appropriate supervision of Keesey in the above described transactions, by failing to diligently exercise reasonable skill and care in providing brokerage services to all parties, and by inappropriately contacting persons having listings with other brokers, thereby demonstrating incompetency to act as a broker in a manner which safeguards the interests of the public. Anderson is responsible for the acts of Keesey pursuant to section 452.12(3) of the Wisconsin Statutes.

INVESTIGATION FILE 96 REB 139

h) Section 452.14(3)(i) Wis. Stats., by disbursing trust funds in an inappropriate and unauthorized manner, contrary to the understanding and intent of the parties thereby demonstrating incompetency to act as a broker in a manner which safeguards the interests of the public.

INVESTIGATION FILE 96 REB 160

i) Section RL 17.08(1) Wis. Adm. Code, by failing to provide appropriate supervision of Keesey. Anderson is responsible for the acts of Keesey pursuant to section 452.12(3) of the Wisconsin Statutes.

ORDER

NOW, THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, that the real estate broker license of Respondent **JOYCE E. ANDERSON**, license #31263, is hereby **SUSPENDED for a period of not less than six months**, commencing thirty (30) days from the date of this Order.

IT IS FURTHER ORDERED, that Respondent **JOYCE E. ANDERSON**, within six months of the date of this Order, successfully complete all **EDUCATIONAL REQUIREMENTS** for applicants for both an original real estate salesperson (72 HOUR COURSE) and real estate broker's (36 HOUR COURSE) license, as set forth in Chapter RL 25 of the Wisconsin Administrative Code, and submit proof of the same in the form of verification from the institution providing the education to the Real Estate Board, P.O. Box 8935, Madison, Wisconsin 53708-8935.

None of the education completed pursuant to this requirement may be used to satisfy any continuing education requirements that are or may be instituted by the Board or the Department of Regulation and Licensing.

IT IS FURTHER ORDERED, that in the event Respondent **JOYCE E. ANDERSON** fails to comply with the required education as set forth above, or fails to verify the same to the Department of Regulation and Licensing as set forth above, then her real estate broker's license shall continue under suspension without further hearing or order of the board, until she has fully complied with all the terms of this Order, and her failure to complete this education and verify it as set forth above shall be considered a violation of this Order by the Board and shall subject her to further and additional discipline under the provisions of chapter 452 of the Wisconsin Statutes.

IT IS FURTHER ORDERED, that following the completion of the six (6) month suspension period and completion of all educational courses for licensure as a real estate salesperson and real estate broker as set forth herein, the Respondent **JOYCE E. ANDERSON**, may petition the Board for issuance of a Wisconsin real estate salesperson license, which if issued to her, shall be subject to the following **LIMITATIONS**:

1. Upon obtaining employment as a licensed real estate salesperson, with a licensed real estate broker, **JOYCE E. ANDERSON** shall immediately provide the Board with the broker-employer's name, address and telephone number.
2. Commencing the first day of the third month following the issuance of a limited real estate salesperson license to **JOYCE E. ANDERSON**, and on the first day of every three months thereafter, respondent shall cause her broker-employer to submit a written statement to the Board assessing:
 - a) the performance and dealings with the public by respondent as a real estate licensee; and

b) whether or not respondent has followed the guidelines and requirements established by the broker-employer; and

c) whether or not respondent has followed the laws and regulations of the State of Wisconsin relating to the practice of real estate.

IT IS FURTHER ORDERED, that following the completion of twenty four (24) months of working as a licensed real estate salesperson under the limitations set forth herein, the Respondent JOYCE E. ANDERSON, may petition the Board for issuance of a Wisconsin real estate broker's license. This petition must affirmatively state, under oath, the following:

1. That Respondent has satisfied all requirements of this Order through the date of the Petition;

2. That Respondent has not been the subject of further disciplinary action by the State of Wisconsin;

3. That Respondent is not, at the time of the filing of the Petition with the Board, a subject of a pending investigation by the Division of Enforcement of the Department of Regulation and Licensing;

4. That Respondent has never been arrested;

5. That Respondent has never been convicted of any crime; and

6. That Respondent has completely and successfully satisfied all required continuing education required for both real estate salespersons and real estate brokers from the date of the Board Order through the date the Petition is filed.


IT IS FURTHER ORDERED, that Respondent **JOYCE E. ANDERSON** pay partial **COSTS** of this matter in the amount of **\$1,000.00** within one (1) year of the date of this Order by making payment of the same to the Department of Regulation and Licensing, P.O. Box 8935, Madison, WI 53708-8935.

IT IS FURTHER ORDERED, that in the event JOYCE E. ANDERSON fails to pay costs of \$1,000.00 within the time and in the manner as set forth above, then any and all credentials issued to her under chapter 452 of the Wisconsin Statutes shall be suspended, without further notice, hearing or order of the Board, and said suspension shall continue until the full amount of said costs have been paid to the Department of Regulation and Licensing, and her failure to pay the costs shall be considered a violation of this Order by the Board and shall subject her to further and additional discipline under the provisions of chapter 452 of the Wisconsin Statutes.

IT IS FURTHER ORDERED, that Division of Enforcement files 94 REB 065, 95 REB 040, 95 REB 154, 95 REB 309, 96 REB 139, 96 REB 160 and 97 REB 084 are hereby closed as to Respondent Joyce E. Anderson and not as to any other respondent.

Dated this 26 day of MARCH, 1998.

WISCONSIN REAL ESTATE BOARD

By: 
A Member of the Board

Attachments: Exhibits A, B and C

i/anderson/joyce.doc

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST	:	FINAL DECISION AND ORDER
	:	92 REB 022
JOYCE E. ANDERSON,	:	92 REB 027
RESPONDENT.	:	

The parties to this action for the purposes of Wis. Stats. sec. 227.53 are:

Joyce E. Anderson
W5428 Melvin Rd.
Monroe, WI 53566

Wisconsin Real Estate Board
P.O. Box 8935
Madison, WI 53708-8935

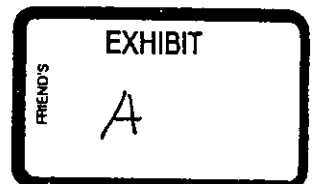
Department of Regulation and Licensing
Division of Enforcement
P.O. Box 8935
Madison, WI 53708-8935

The parties in this matter agree to the terms and conditions of the attached Stipulation as the final decision of this matter, subject to the approval of the Board. The Board has reviewed this Stipulation and considers it acceptable.

Accordingly, the Board in this matter adopts the attached Stipulation and makes the following:

FINDINGS OF FACT

1. Joyce E. Anderson (D.O.B. July 10, 1943) was first licensed, pursuant to license #31263, to practice as a real estate broker in the state of Wisconsin on February 20, 1984.
2. Respondent's latest address on file with the Department of Regulation and Licensing is W5428 Melvin Rd., Monroe, WI 53566.



3. On or about November 29, 1991, an Offer to Purchase the property owned by Nathan H. Brown and David Brown was drafted by Anderson on behalf of purchaser Randall B. Miller and Judith K. Miller, consisting of vacant land at a sale price of \$15,500.00. The purchase and sales transaction was closed on January 3, 1992.

4. In drafting the Miller Offer to Purchase, the Respondent made numerous changes in the Offer and failed to have the parties approve the changes in writing by either redrafting the Offer to Purchase in its entirety or having the parties date and initial each change in the Offer to Purchase; and finally, she failed to complete the date of presentation of the Offer to the seller.

5. On or about January 15, 1992, an Offer to Purchase property owned by Nathan H. Brown and David Brown was drafted by Anderson on behalf of purchaser, Michael E. Moellenberndt and Karen E. Moellenberndt, consisting of vacant land at a sales price of \$10,000.00. Anderson failed to have the parties approve the changes in writing by either a redraft of the Offer to Purchase in its entirety or having the parties date and initial each change in the purchase agreement. Anderson failed to record the date of the seller's agreement in the Offer.

CONCLUSIONS OF LAW

1. The Wisconsin Real Estate Board has jurisdiction over this matter pursuant to sec. 452.14, Wis. Stats.

2. Respondent Joyce Anderson has violated: Section 452.14(3)(i), Wis. Stats., and section RL 24.08, Wis. Adm. Code, by her incompetency in failing to prepare the exact agreement of the parties in writing and record the date of her presentation of the buyer's Offer to the Seller.

ORDER

NOW THEREFORE, IT IS HEREBY ORDERED, that the attached Stipulation is accepted.

IT IS FURTHER ORDERED, that within six (6) months of this Order, Respondent, Joyce E. Anderson, shall successfully complete four (4) hours of real estate related education in Approved Forms as set forth in sec. RL 25.02(2), Wis. Adm. Code at an educational institution approved by the Department of Regulation and Licensing and submit proof of the same in the form of a verification from the institution providing the education to the Real Estate Board, P.O. Box 8935, Madison, Wisconsin 53708-8935. None of the education completed pursuant to this requirement may be used to satisfy any continuing education requirements that are or may be instituted by the Board or the Department of Regulation and Licensing.

IT IS FURTHER ORDERED, that in the event Respondent Joyce E. Anderson fails to complete the required four (4) hours of education as set forth above within six (6) months of the date of this Order and fails to verify the same to the Department of Regulation and Licensing

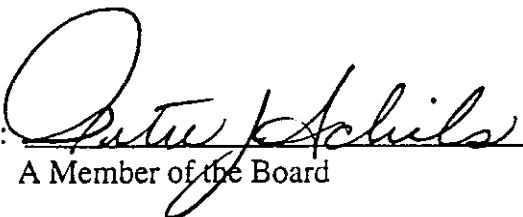
within seven (7) months of the date of this Order, then her individual license shall be indefinitely suspended until she has complied with the terms of this Order.

IT IS FURTHER ORDERED, that the Real Estate Board shall close investigative files numbers 92 REB 022 and 92 REB 027.

The rights of the party aggrieved by this Decision to petition the Board for rehearing and to petition for judicial review are set forth on the attached "Notice of Appeal Information".

This Order shall become effective ten (10) days following the date of its signing.

REAL ESTATE BOARD

By: 
A Member of the Board

9/23/93
Date

RRH:pw
ATY-Elg36



State of Wisconsin \ DEPARTMENT OF REGULATION & LICENSING

Tommy G. Thompson
Governor

May 9, 1995

Martene A. Cummings
Secretary

1400 E. WASHINGTON AVENUE
P.O. BOX 8935-4935
MADISON, WISCONSIN 53708
608 256-2112

Joyce Anderson
c/o Sunshine Realty
Highlander Mall
765 10th Avenue
Monroe, WI 53566

Dear Mrs Anderson:

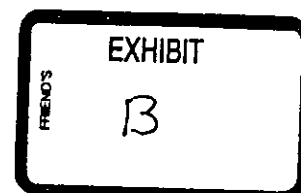
Enclosed you will find some items that you may find helpful. I have enclosed some sample ledger/journal forms, along with two samples of forms that can be used when you do your monthly trial balance and bank reconciliation. In addition I am sending you a copy of Chapter 16 of the Wisconsin Real Estate Law text that relates to the proper way to record real estate transaction in a journal and ledger as well as how to do monthly trial balances and bank reconciliations.

If any questions, I can be reached at (608) 267-3814.

Sincerely,

Gene Kleinert
Auditor
Division of Enforcement

ID:DOE18



Regulatory Boards

Accounting; Architects, Landscape Architects, Professional Geologists, Professional Engineers, Designers and Land Surveyors; Auctioneer; Barbering and Cosmetology; Chiropractic; Dentistry; Dietitians; Funeral Directors; Hearing and Speech; Medical; Nursing; Nursing Home Administrator; Optometry; Pharmacy; Physical Therapists; Psychology; Real Estate; Real Estate Appraisers; Social Workers; Marriage and Family Therapists and Professional Counselors; and Veterinary.

Committed to Equal Opportunity in Employment and Licensing

[illegible]

Seller _____
Location of Property _____

Listing Broker

Buyer _____

	Selling Broker	Type of Transaction	Price
			Price

[illegible]

[illegible]

as of _____, 19__.

Account # _____

Bank: _____

- 1) Enter Ending Checking Account Balance
Per Bank Statement

\$ _____

- 2) Add Deposits "in transit" not
reflected on bank statement

	<u>Date</u>	<u>Amount</u>
1.	_____	\$ _____
2.	_____	\$ _____
3.	_____	\$ _____
4.	_____	\$ _____
5.	_____	\$ _____
6.	_____	\$ _____

Total \$ + _____
Balance \$ _____

- 3) Subtract Checks Outstanding -
written but not yet paid by the bank

	<u>Check No.</u>	<u>Amount</u>
1.	_____	\$ _____
2.	_____	\$ _____
3.	_____	\$ _____
4.	_____	\$ _____
5.	_____	\$ _____
6.	_____	\$ _____
7.	_____	\$ _____
8.	_____	\$ _____

Total \$ - _____
4) Ending Balance \$ _____

5) TRIAL BALANCE

- a) Funds deposited to keep account open

\$ _____

- b) Party or Ledger Page Amount

1.	_____	\$ _____
2.	_____	\$ _____
3.	_____	\$ _____
4.	_____	\$ _____
5.	_____	\$ _____
6.	_____	\$ _____
7.	_____	\$ _____
8.	_____	\$ _____

Total \$ _____
6) Ending Balance \$ _____
(should equal
Line 4)

Account Reviewed: _____, 19__.

By: _____

Bank Balance as of _____ 19 _____

§ _____

DATE	AMOUNT

DATE	AMOUNT

3 _____

[illegible][illegible]

Check Sub Balance

\$ _____

(1) \$ _____

[illegible]

Total must agree with (1) above.

3

Real Estate Trust Funds

- 16.01 Major Areas of Concern, 16-1
 - A. Legal Requirements, 16-1
 - B. Contractual Obligations, 16-3
 - C. Professional Requirements, 16-3
- 16.02 What are Trust Funds?, 16-3
- 16.03 Type of Account for Trust Funds, 16-3
- 16.04 Depositable Funds versus Nondepositable Funds, 16-4
- 16.05 Sources of Trust Funds, 16-4
- 16.06 Responsibility for Handling of Trust Funds, 16-5
- 16.07 Bookkeeping System, 16-6
 - A. The Cash Journal, 16-6
 - B. The Ledger, 16-6
 - C. Trial Balance and Account Reconciliation, 16-7
- 16.08 Separate Account(s), 16-7
- 16.09 Trust Account Procedures, 16-8
 - A. Receipts and Deposits, 16-8
 - B. Trust Fund Disbursements, 16-9
 - C. Earnest Money Down Payment, 16-10
 - D. Escrows, 16-11
 - E. Credit Report and Appraisal Fees, 16-11
 - F. Proceeds of a Sale, 16-11
 - G. Rental Receipts, 16-12
 - H. Property Management, 16-12
 - I. Security Deposits, 16-13
 - J. Land Contract Payments, 16-13
 - K. Records Retention, 16-13
- 16.10 Account Reconciliation, 16-13
- 16.11 Broker Trust Account Problem Areas, 16-14
 - A. Self-dealing by Broker, 16-14
 - 1. Sale of Broker-owned Property, 16-14
 - 2. Purchase of Property by the Broker, 16-14
 - 3. Rental Security Deposits, 16-14
 - 4. Mortgage or Land Contract Payments, 16-14
 - B. Abstract and Title Policy Payment, 16-14
 - C. Payment of Commission to Co-Broker Salespersons, 16-14
 - D. Personal Funds Identified, 16-15
- 16.12 Summary, 16-15
- 16.13 Hypothetical Example and Illustrations of Record Keeping, 16-15

16.01 MAJOR AREAS OF CONCERN

Real estate trust funds present several areas of concern for the real estate broker and his or her salespersons. They are legal requirements, contractual obligations, professional standards, and ethical conduct.

A. Legal Requirements

The primary legal requirement concerning the

handling of real estate trust funds is contained in chapter 452 of the Wisconsin statutes. This chapter expresses the degree of diligence required in handling trust funds and formalizes the practice long employed by reputable brokers in accordance with recognized principles of the law of agency. The chapter also provides for an audit of the broker's trust account by the Department of Regulation and Licensing. Specifically, section 452.13 of the Wisconsin statutes reads:

452.13 Trust accounts. All down payments, earnest money deposits or other trust funds received by a broker or salesperson on behalf of the broker's or salesperson's principal or any other person shall be deposited in a common trust account maintained by the broker for that purpose in a bank, saving and loan association or credit union which is authorized to do business in this state and is designated by the broker pending the consummation or termination of the transaction, except that the money may be paid to one of the parties pursuant to the contract or option. The name of the bank, saving and loan association or credit union shall at all times be registered with the department, along with a letter authorizing the department to examine and audit the trust account when the department deems it necessary.

Chapter RL 18 of the Wisconsin Administrative Code which governs the handling of real estate trust funds appears in Appendix B. The legal requirements created in chapter rule RL 18 are discussed later in this chapter. The major features of the regulatory structure created by the statute and the rules are:

TRUST ACCOUNT REQUIREMENTS

1. Each broker must maintain a deposit trust account for the deposit of real estate trust funds when such funds come into the broker's possession. Rule RL 18.03(3).
2. To provide for emergencies, the broker may authorize someone other than the broker to sign trust account checks. Rule RL 18.04.
3. Each broker must notify the Department of the name of the institution where the account is maintained and the name of the account. When the account is opened, closed, or changed in any way, the Department must be notified within 10 days after the change. Rule RL 18.03(7).
4. Each broker must authorize representatives of the Department to examine the real estate trust account and have the bank certify that there is such an account. Rule RL 18.03(6).
5. The broker must deposit only trust funds received in real estate transactions in the trust account. Rule RL 18.10. The only exception is that the broker may deposit and maintain up to \$100.00 in personal funds which is specifically identified and used to cover service charges relating to the account.
6. A broker may maintain more than one trust account subject to rules 3 and 4, above. Rule RL 18.03(2).
7. Each broker must deposit real estate trust funds into the trust account within 24 hours. Rule RL 18.03(1)(b).
8. A salesperson who receives trust funds must promptly submit the funds to his or her employer-broker. Rule RL 18.03(1)(c).
9. A bookkeeping system, including a journal and a ledger, must be maintained in a permanently bound form, listing the dates, names of the parties to the transaction, the amounts of money received and disbursed, including the number of the check, draft, or share draft relating to the disbursement. A running balance must be shown after each entry. The ledger is a record of the transaction summarized individually. There must be a separate ledger section for each type of transaction (i.e., sales, rental collections, land contract collections, etc.). The ledger must show the dates, the names of the parties to the transaction, the amounts of money received and disbursed, and the number of the check, draft, or share draft for the disbursement. There must be a monthly reconciliation of the account in writing, except in cases of no activity.
10. Deposits in lieu of cash as down payment must be held by one of the parties or an authorized escrow agent subject to an escrow agreement. Except for promissory notes, a broker cannot hold any instrument or other thing of value which is not depositable in the trust account. Rule RL 18.11(1). A broker may accept a promissory note from buyers as down payments and hold such notes if the offer to purchase contains language giving the broker authority to hold the note. In such case, the broker must modify the earnest money clause and the receipt section on the offer to show receipt of the note. Rule RL 18.11(2).
11. A branch office trust account must be supported by a separate bookkeeping system at the branch office. Rule RL 18.12.
12. Commissions or fees earned by the broker must be withdrawn within 24 hours after the transaction is terminated. Rule RL 18.09(1).
13. Trust account records should be retained for at least three years after the date of closing of the transaction. Rule RL 24.14(3).

B. Contractual Obligations

In addition to legal requirements, brokers must meet obligations created by agreement. The first of these agreements is the listing contract. Since the broker is a party to the listing contract, he or she is bound by the terms of that contract. In the Department-approved listing contract, the broker promises to handle trust funds in a specific manner:

All funds delivered to broker shall be retained by broker in the broker's authorized trust account, unless otherwise agreed by seller and buyer.

This statement is found in the five Department-approved listing contract forms.

The second instance where the broker binds himself or herself is in the offer to purchase which provides that:

Earnest money, if held by broker, shall be held in selling broker's trust account prior to acceptance of offer and thereafter in listing broker's trust account until applied to the purchase price at closing or disbursed as provided herein or permitted by law.

C. Professional Requirements

The third major area of concern with trust funds involves professional standards and ethical conduct. As the real estate industry moves toward professional status, it is implicit that there be a reasonable expectation of ethical conduct. There is a basic moral responsibility which rests squarely upon the shoulders of a person of honor when dealing with others who depend on him or her. The professional real estate broker accepts the responsibility for the prudent handling of funds that are entrusted to his or her care during real estate transactions. This kind of high level precedent has been set by other accepted professions. For example, in Wisconsin, the practice of law is governed by the Rules of Professional Conduct adopted by the Wisconsin Supreme Court. The following is an excerpt from Supreme Court Rule 20:1.15:

All funds of clients paid to a lawyer or law firm shall be deposited in one or more identifiable trust accounts . . . maintained in the state in which the law office is situated and no funds belonging to the lawyer or law firm except funds reasonably sufficient to pay account service charges may be deposited in such an account.

This lead by the legal profession apparently set the stage for similar action in the real estate field. In 1955, the National Association of Real Estate Boards

added Article Eight to the REALTORS® Code of Ethics, which reads as follows:

The REALTOR® should keep in a special bank account, separated from his own funds, monies coming into his possession in trust for other persons, such as escrows, trust funds, client's monies and other like items.

This section binds all REALTOR® members of the trade association.

16.02 WHAT ARE TRUST FUNDS?

As a general definition, "real estate trust funds" are money or things of value received by the broker or his or her salesperson on behalf of his or her principal or any other person which do not belong to the broker but are held for the benefit of others.

The administrative code, rule RL 18.02(3), furnishes a more specific definition of "real estate trust funds:"

(3) "Real estate trust funds" means:

(a) Cash, checks, share drafts, drafts or notes received by a broker or a broker's salesperson on behalf of a principal or any other person while performing as a licensed real estate broker or salesperson, including:

1. Payments on land contracts, mortgage payments, and any other receipts pertaining to mortgages.
2. Tax and insurance payments held in escrow.
3. Advance fees and finder's fees.
4. Rental application deposits and rents.
5. Security deposits on rental property.

(b) Initial and additional earnest money down payments and other monies received in connection with offers to purchase, options, and exchanges, even if the real estate or business opportunity is owned wholly or in part by the licensee.

This definition of trust funds does not include funds collected on a construction contract.

16.03 TYPE OF ACCOUNT FOR TRUST FUNDS

Real estate trust funds must be deposited in an account with a maturity of no more than 31 days. Rule RL 18.03(1). The account can be established in a bank, savings and loan association, or credit union.

Prior to July of 1984, brokers were required to keep trust funds in noninterest-bearing accounts. The Department revised this requirement in rule RL 18.03(2), effective July 1, 1984, to provide that trust funds may be deposited in an interest-bearing account if the parties for whom the funds are held agree in writing

to having the funds deposited in an interest-bearing account. The agreement must specify how and to whom the interest will be disbursed. None of the interest earned in such an account may inure to the benefit of the broker. A mortgage banker who requires an escrow for taxes and insurance must pay interest of not less than 5.25% per year and may keep for its own any additional interest earned, unless the escrow funds are held by a third-party in a noninterest-bearing account.

In opening and maintaining the trust account, the broker must name the account with the name appearing on the broker's license or with a trade name submitted to the Department. Rule RL 18.03(4)(c). In addition, the broker should include the words "trust account" in the name of all real estate trust accounts maintained by the broker. Whenever, a broker changes a real estate trust account name or number, changes the trust account from one institution to another, or changes the name appearing on the broker's license, the broker must notify the Department. Rule RL 18.04(5).

16.04 DEPOSITABLE FUNDS VERSUS NONDEPOSITABLE FUNDS

Typically, in a real estate transaction, the broker will receive funds in the form of cash, checks, drafts, share drafts, money orders, or bank drafts. These funds are received in connection with offers to purchase, collection of rents and security deposits, mortgage payments including tax and insurance escrows, and so forth. These types of funds can be deposited in the broker's trust fund with little or no difficulty.

Sometimes, however, a party, as part of the transaction, will want to convey items in lieu of a cash payment. These items include such things as bonds, stock, notes, jewelry, equipment, livestock, or any other instrument, equity, or thing of value. Because these items cannot be deposited in a trust account, the broker must be cautious in seeing that these items are properly handled. The Department's rules, rule RL 18.11(1), provide that:

With the exception of promissory notes, a broker shall not hold as down payment from a buyer any instrument, equity or thing of value which is not depositable in a real estate trust account. Nondepositable items other than promissory notes shall be held by one of the parties to the transaction or some other party, subject to an escrow agreement prepared by the parties or an attorney.

Thus, a broker cannot hold nondepositable items with the exception of promissory notes. The

nondepositable item would be held by a party, an attorney, or some other third party.

When a promissory note is used as a down payment, rule RL 18.11(2) allows the broker to accept it and establishes how receipt of the down payment should be documented. The rule provides:

A broker may accept promissory notes from buyers as down payments, and hold these for the parties to the transaction, if the broker inserts language in the offer to purchase which expressly gives the broker authority to hold the note and if the broker modifies the earnest money clause and the earnest money receipt in the offer to purchase to show receipt of a promissory note.

Some attorneys and brokers seriously question the use of a note as earnest money, claiming the note is a promise backing up another promise to perform already in the contract. However, these notes are usually of only a few days duration.

When a buyer tenders a promissory note as part of the down payment and this fact is recited in the offer, the note is subject to the provisions of the contract affecting earnest money. There will be occasions when the parties will find it necessary to use promissory notes. This could occur on a weekend in cases where the buyer does not have ready cash. The funds he or she intended to use as a down payment may be on deposit in a savings account. A promissory note could also be used in connection with the additional down payment payable upon acceptance of the offer. In drawing up an offer to purchase, the broker may resort to the use of notes simply because the cash is not readily available, and there is a reasonable expectation that it will be available within a few days.

16.05 SOURCES OF TRUST FUNDS

There are four major sources of real estate trust funds. They are as follows:

- Earnest money, down payments, and additional down payments.
- Collection of rents, collection of security deposits, collection of payments on land contracts, mortgages, and tax and insurance escrow money.
- Collection of advance fees and other items that are prepaid.
- Receipts pertaining to the sale, exchange, purchase, or rental of business opportunities.

The most common form of trust funds is found in the first category: that is earnest money, down pay-menu, and additional down payments collected in connection with offers to purchase, options, escrows, and similar real estate transactions.

Even in cases where the real estate is owned by the broker and is offered for sale, the funds collected must be deposited in the real estate trust account and held there until releasable just as in a transaction where the property is not owned by the broker.

The second major source of real estate trust funds deals with the collection of real estate rents. This would most likely be associated with the role of the property manager or a real estate broker performing the property management function. Rents collected on properties owned by third parties must be deposited in the trust account of the real estate broker. The same holds true for taxes and insurance monies collected on properties that brokers have sold on land contract. This assumes that the taxes and insurance monies are prepayments to be transmitted to the real estate taxing authority or to the casualty insurance company at some future date. Special attention should be given to the collection of security deposits. Such funds must be segregated and held according to the terms of the rental agreement. Collection of payments on land contracts owned by a third party as well as payments on mortgages due to third parties are other examples of collections that are to be deposited in the broker's trust account until the time of accounting with his or her principal.

A third source of real estate funds is the collection of advance fees and finder's fees. The key word is advance, indicating that services are to be performed in the future. This means that the fees will not be earned until the service is performed. Therefore, they are not earned until such performance actually takes place. During the interim period, the funds should be retained in the real estate trust account.

The fourth category deals with receipts pertaining to the sale, exchange, purchase, or rental of business opportunities. Sometimes, doubt arises because business opportunities usually involve personal property, not real property. Regardless of this fact, the statute calls for the broker giving them the same trust fund treatment as real property.

16.06 RESPONSIBILITY FOR HANDLING OF TRUST FUNDS

In considering the responsibility for the proper handling of clients' trust funds, one may ask: Is it the

broker's responsibility? Is it the salesperson's responsibility? Actually, it is the responsibility of all licensed real estate people. The law of agency applies in this case. The principal, or the broker, is responsible for the acts of his or her sales people. The broker is accountable for trust funds from the time they are received until they are properly disbursed. When a sales person takes a deposit, he or she does so as the agent of the broker under whom he or she is Licensed. Since the principal is responsible for the wrongs of his or her agent committed within the scope of his or her employment, the broker is liable to the buyer if his or her salesperson embezzles funds given as earnest money, down payment, deposit, or any other form of trust. This potential liability calls for strict supervision by the broker. The broker should instruct his or her sales people to issue receipts for all trust funds taken on behalf of the broker.

The responsibility of the broker for the actions of his or her sales people has three possible dimensions: civil action, administrative action by the Wisconsin Real Estate Board, or criminal action. The broker and his or her sales people could be liable in a civil suit for recovery of the money that is not accounted for, or they could be responsible to the Wisconsin Real Estate Board for improper accounting of funds, or they could be prosecuted by the local district attorney on a criminal charge for misappropriation of funds. Attention should be called to a kind of "home-made" legal philosophy that has been noted on occasion. At times, statements are made that in the event the broker replaces the misappropriated funds in his or her trust account, everything is back in order. This statement is not correct. There was a violation of the law, and the Wisconsin Real Estate Board may call a hearing to determine whether the violation of the administrative code regarding the handling of trust funds calls for disciplinary action. In this case, if the findings prove the violation, there can be a suspension or revocation of license. There is also the possibility that the district attorney may decide to take criminal action.

The real estate broker should also be cautious about the role of the so-called "book-tenders." The term "book-tenders" refers to inexperienced bookkeepers, secretaries, office staff, spouse, or any other party who has been delegated the job of keeping the records of the real estate trust funds. The broker is reminded that while he or she can delegate the authority or the work to another individual, he or she cannot delegate the responsibility of being accountable under the statutes. The responsibility rests squarely on the shoulder of the broker even though he or she may have hired a third

the only record of the transaction. It becomes impractical to handle the myriad of accounting details connected with the trust account without a systematic process. These details include when the funds were received, how much was received, when the funds were deposited, whose funds were they, when they were disbursed, to whom were they disbursed, and how much was disbursed. To fulfill the obligation a broker has accepted by receiving funds as a trustee, the broker must use a complete, accurate, and systematic procedure. Thus means a bookkeeping system. The bookkeeping system is a systematic record of all the trust account transactions which take place in the broker's business. These historical records show what has taken place in the broker's real estate trust account. They are referred to in case of arguments, investigations, and lawsuits.

The administrative regulations, rule RL 18.13, require that each broker maintain a bookkeeping system in his or her office to record the receipt, deposit, and disbursement of real estate trust funds.

The trust account bookkeeping cycle consists of five distinct and separate steps:

- Step 1: Journalize the transaction.
- Step 2: Post to the ledger.
- Step 3: Take a monthly trial balance.
- Step 4: Prepare an account reconciliation.
- Step 5: Compare the trial balance against the reconciliation.

A. The Cash Journal

In the bookkeeping system, the journal is an account book into which are recorded, daily, the funds received or disbursed. The journal should show the chronological sequence in which funds are received and disbursed.

Rule, RL 18.13(1), specifies what the journal should contain:

- For funds *received*, the journal must include:
(a) the date,

All cash receipts and disbursements are entered in the cash journal chronologically as they occur. Chronological, of course, means "as to time." Thus, in the cash journal for any given month, the cash receipts or disbursements would start on the first day and continue day by day throughout the month. An entry is made only when there has been a receipt or disbursement of cash. The accuracy and completeness of each entry cannot be overstressed. The person who makes the original entry may leave the employ of the broker, but the original record always remains in the broker's cash journal. Thus, the need for clarity and completeness cannot be overstressed.

B. The Ledger

The second step in the bookkeeping cycle is "posting to the ledger." The ledger is a summary of all the cash receipts received from a buyer, tenant, mortgagee, etc., and all the disbursements made in behalf of the seller, landlord, mortgagee, etc. The postings to the ledger are made from the cash journal (CASH RECEIPTS — CASH DISBURSEMENTS). Promissory notes received should be entered directly to the applicable ledger account. Because of the varied nature of the different types of real estate transactions, specialized ledgers must be used. A transaction involving the sale of property is usually of a short duration and all monies received are disbursed at the closing. Thus, the broker would have a "Real Estate Sales Ledger." Property management is normally a long-term transaction in which the broker receives rents and pays the necessary expenses incurred on the property and make payments to the principal as directed. This type of activity requires a "Rental Ledger." The broker may expand into other fields of real estate which would necessitate such specialized ledgers as a "Mortgage Collection Ledger," "Land Contract Collection Ledger," "Escrow Ledger," "Security Deposit

Ledger." A ledger ~~shows~~ the receipt and the disbursements as they affect a single, particular transaction - as between buyer and seller or landlord and tenant, etc. According to rule RL 18.13(2), the ledger must include: the names of both parties to a transaction, the dates, and the amounts received. When funds are disbursed, the ledger entry must include: the date, the payee, the check number, and the amount.

In addition, the ledger must show a running balance and must segregate each transaction. There must be a separate ledger or separate section of the ledger for each of the various kinds of real estate transactions (i.e., sales, rental collections, or mortgages and land contract collections).

C. Trial Balance and Account Reconciliation

The third basic step in the bookkeeping cycle is the "taking a trial balance." A trial balance is a listing of all the open ledger accounts and is taken after all posting from the journals to the ledgers is completed. An open ledger account is one in which there are funds which have not been disbursed to one of the parties to the transaction. Therefore, the trial balance lists the parties to the transaction and the amount of money the broker is holding for them in the trust account. The trial balance, by itself, is not conclusive proof that the ledgers are correct. The broker must ask the question: "How much money is on deposit in the bank, credit union, or savings and loan to cover the trial balance liability?" To determine the available cash in the account, the fourth and fifth steps in the bookkeeping cycle, "preparing an account reconciliation" and "trial balance and reconciliation comparison," must be performed.

How often must a trial balance be taken? Rule RL 18.13(3) requires that the trust account be reconciled monthly except where there has been no activity during the month.

The trial balance of the ledger may be taken anytime during the month and compared with the running balance of the cash receipts and disbursements journal. However, the broker should compare the journal running balance and ledger detail with the reconciled account statement. The trial balance, the account reconciliation, and all supporting documents must be kept on file for three years.

16.08 SEPARATE ACCOUNT(S)

The broker is required to open a trust account only when trust funds come into the broker's possession. The account may be closed when no real estate trust

funds remain in the broker's possession. Rule RL 18.03(3). The broker may have as many trust accounts as he or she feels is necessary for the operation of his or her real estate business. Each account, however, must be registered with the Department. The broker may want to open a trust account for each of the various types of real estate activity, such as sales, property management, land contracts and mortgage collection, etc. Each of the broker's principals in the property management and mortgage (principal - interest - taxes - insurance) phase of the broker's business may require the broker to segregate these funds from other trust funds received by the broker. It is very easy to see the need for additional trust accounts. It is the responsibility of the broker to have every trust account registered on a form specified by the Department. These forms may be obtained by wiring the Wisconsin Department of Regulation and Licensing, 1400 East Washington Avenue, Madison, Wisconsin 53702.

Trust account checks, drafts, and share drafts should be imprinted with the name and identification of the special account, such as "Real Estate Trust Account: 'J.S. SMITH PROPERTY MANAGEMENT Trust Account.'" Further, the checks, drafts, and share drafts, as well as the stubs, should be consecutively numbered. This will afford the broker greater control. It will also minimize the possibility of error and assist in preparing a bank reconciliation at the end of each month. Spoiled or voided checks, drafts, and share drafts should not be thrown away but instead filed with the cancelled checks, drafts, and share drafts.

Recent depository innovations require the depositor to have deposit slips imprinted with the individual's account number. It cannot be scratched out to be used to deposit funds to another account. It can only be used for the account imprinted on it. This type of deposit ticket does not usually come with a duplicate record. The original is turned over to the bank along with the deposit fund. It is recommended that the broker obtain a deposit receipt book which provides a duplicate deposit slip which would remain in the book. The bank, savings and loan, or credit union upon receipt of the funds issues a deposit receipt or records the deposit in the broker's account passbook, if one is used. In either case, care should be exercised to preserve whichever deposit record is used.

The institution at which the broker maintains his or her trust account will normally send out a monthly statement showing deposits received and disbursements made. This statement should be retained by the broker for a period of at least three years. The broker, to assure the statement's accuracy, should examine each

statement at once. The balance shown on the account statement may or may not be the true available cash balance. The true unencumbered cash balance can only be obtained by preparing a account reconciliation. A typical account reconciliation appears later in this chapter.

A trust account does not normally contain any funds of the broker. However, rule RL 18.10 allows the broker to maintain limited personal funds in the trust account. The rule reads:

A broker shall deposit only real estate trust funds in the broker's real estate trust account and shall not commingle the broker's personal funds or other funds in the trust account, except that a broker may deposit and keep a sum not to exceed \$100.00 from the broker's personal funds in any real estate trust account, which sum shall be specifically identified and deposited to cover bank service charges relating to the trust account.

The preceding regulation allows the broker to keep a sum not to exceed \$100.00 of personal funds in the trust account. This amount is to cover items the depository institution may charge for maintaining the account, such as monthly service charges, printing checks, drafts, share drafts, deposit slips, and stop payment charges. If the broker and the institution can arrange to have the various charges against the trust account charged against the broker's business account, there would be no need for the broker to keep any personal funds in the trust account, thus preserving the purity of the trust account. If the broker does have personal funds in the trust account and the institution does assess service charges against the account, the broker's records must specifically identify the deposits and charges against it. This requires that the broker set up a separate ledger sheet showing all bank charges in connection with his or her personal funds. A typical ledger sheet appears later in this chapter.

After a transaction is consummated or terminated, the broker has 24 hours in which to remove the earned commission, fees, or any expenses that were prepaid for the seller. The balance of the funds remaining in the trust account remain trust funds. They *are not* to be disbursed to the broker's business account. If this were done, the broker would be commingling trust funds and business funds. The broker should disburse the balance of the funds directly to the seller and/or the seller's creditors as they appear on the closing statement.

16.09 TRUST ACCOUNT PROCEDURES

A. Receipts and Deposits

The real estate broker may receive a variety of

trust funds. The major types of trust funds are earnest money, additional down payments, proceeds of the sale, rent receipts, security deposits, mortgage payments, land contract receipts, tax escrows, insurance escrows, credit report fees, appraisal fees, completion escrows, occupancy escrows, option money, and finder's fees, etc. There must be no time delay in depositing the trust funds received by the broker or his or her salespersons. Deposit all trust funds the same day or at least the next business day. Rule RL 18.03(1)(b) states that trust funds received by a broker or salesperson must be deposited within 24 hours of their receipt in the receiving broker's registered trust account. If the trust money is received on a day prior to a holiday or other day that the bank, savings and loan, or credit union is closed, the money must be deposited on the next business day of the institution. An unexplained delay in the deposit may cast a veil of suspicion on the broker — has the broker or salesperson been using trust funds for other purposes during the period of delay? Rather than invite suspicion or expose the funds to theft, fire, being misplaced, or other hazards — deposit them immediately! If the bank, savings and loan, or credit union is in a city other than the location of the broker's real estate office, it is suggested that the broker mail deposits. This will enable the broker to comply with the law and will be a convenience as well. However, using the mail may cause overdrafts. These may occur when the seller goes directly to the institution where the broker maintains his or her trust account and cashes the check prior to the mailed deposit being credited by the institution. Delays in the mail service or reduction of mail pickup and delivery may cause late deposits. If the broker uses the mail, he or she should investigate the postal schedule and act accordingly.

Brokers and salespeople who try to skirt the regulations regarding the receipt and deposit of trust funds open themselves to criticism and disciplinary action. There may be a temptation to withhold the deposit by physically attaching the earnest money to the offer to purchase in an effort to impress the seller. Their goal is to convince the seller that they have a sincere buyer as evidenced by the attached down payment in the form of cash or check. Equivalent sincerity can be demonstrated by calling the seller's attention to the earnest money cited in the body of the offer to purchase and the earnest money receipt at the end of the offer to purchase. This earnest money down payment can be explained to the seller if the broker or salesperson wants to emphasize the quality of the prospective buyer

The broker or salesperson may insert an amount in the earnest money clause found in the body of the offer "Earnest money of \$_____ in the form of _____ tendered herewith" and then not receive the funds so stated. Even though an earnest money receipt is not signed, it is presumed the broker or salesperson did, in fact, receive the amount stated. If the offer to purchase is presented to the seller and the seller accepts the contract, the broker or salesperson has misrepresented the facts.

Another area in which problems arise is with the so-called "weak offer." In such cases, the broker is trying to outguess the seller. The broker wants to hold back the deposit of the down payment assuming that the offer is unacceptable to the seller, thus avoiding entry into the bookkeeping system, the deposit in the bank, and the subsequent refund of the down payment. In such cases, the broker is being presumptuous and may be surprised that the offer is acceptable to the seller because of a change in the seller's condition of which the broker was not aware. In this and other cases, the law calls for immediate deposit of the down payments. There is no alternative.

The broker will undoubtedly encounter the above situation. The broker is reminded, however, regardless of the situation, all trust funds cited in the contract must actually be received and deposited in accordance with the terms of the contract.

In the case of co-brokering on a sale, the standard offer to purchase contract provides the answer as to who retains the earnest money. The form reads:

Earnest money, if held by broker, shall be held in selling broker's trust account prior to acceptance of offer and thereafter in listing broker's trust account until applied to the purchase price at closing or disbursed as provided herein or permitted by law.

Rule RL 18.08(1) requires that the selling broker transfer the earnest money received in the form of cash to the listing broker within 24 hours of acceptance of the offer. When earnest money is received in the form of a personal check, share draft, or draft, the seller-broker may withhold transferring the payment to the listing broker pending clearance from the payor's depository institution. If the check, share draft, or draft clears, the broker must transfer the earnest money to the listing broker within 24 hours of receiving evidence of clearance. Rule RL 18.08(2).

If the broker adheres to the trust account regulations, he or she is safeguarded through his or her records, that he or she has properly received, deposited, and recorded all trust monies that have been entrusted to

his or her care. The broker will also have a record of refunds to clients, transfers to listing brokers, and disbursements made at the closing. This will be evidenced not only in his or her bookkeeping records but also by the cancelled trust account checks.

A receipt should be issued for any money turned over to the broker. The client is entitled to a written acknowledgment of the funds turned over to the broker. The time to issue the receipt is when the broker receives the trust funds — not later. *Under no circumstances, should the broker issue a receipt for anything that was not actually received.* Rule RL 18.05 provides that brokers and salespersons must indicate on the offer to purchase the receipt of *initial earnest money received* from a buyer. Where the contract does not contain a receipt and there are additional deposits, the broker should maintain a receipt book. The original goes to the client, and the duplicate remains in the book. A three-part receipt may be used, in which case a copy would be filed in the client's file folder.

It is a good practice to have the client make his or her check payable directly to the broker's trust account. This will prevent erroneous deposits to the broker's general checking account. This gives a prospective buyer the additional assurance that the down payment will be handled in accordance with the purchase agreement. As a precautionary measure, the broker should stamp a deposit endorsement on the back of the check in case it may be lost, misplaced, or stolen.

As explained above, the Department's rules require that a real estate broker deposit all monies received in a real estate trust account that is registered with the Department. There is no exception to these provisions. In the event a seller and a buyer wish to agree on some type of escrow arrangement between themselves with respect to the earnest money deposits, the agreement must be drafted by the parties or an attorney and may not be drafted by a real estate broker or salesperson. In addition, the broker may not hold these funds in his or her trust account or act in any other manner as the custodian of these funds for the parties. These funds, pursuant to the escrow agreement, must be held by some other party, such as a bank, an attorney or some other individual or entity acceptable to the buyer and the seller, such as a bank, savings and loan association, credit union, or an attorney. Rule RL 18.06.

B. Trust Fund Disbursements

The deposit of funds into the trust account is less complicated than the withdrawal of funds from that account. It is possible for many legal complications to develop in connection with the disbursement of funds

held in the real estate trust account. This process can be simplified if the broker will follow a few simple rules.

- Disburse only in accordance with the contract.
- Never disburse prior to closing.
- Never disburse more than is held for the parties.
- Never disburse in anticipation of receipts.
- Disburse to the broker only funds which are irrevocably his or hers — commissions, fees, reimbursements of prepaid expense of the parties.

The broker is required by rule RL 18.09(1) to remove commissions, fees, and reimbursable expenses from the trust account within 24 hours after the transaction is consummated, terminated, or after the commission or fees are earned in accordance with the contract involved. The broker is cautioned against leaving funds in the trust account to increase the balance of personal funds allowed under rule RL 18.10. In each transaction, all commission fees and reimbursements should be removed. If the broker then decides to increase his or her personal funds, allowable under rule RL 18.10, he or she should do so with a business check.

The prompt removal of earned commissions and fees is important because under the above conditions, just prior to withdrawal, there is a commingling of clients' and broker's funds. Should this condition of commingled funds exist at a time when legal action is taken against a real estate broker, it is possible for the entire account to be tied up pending the outcome of the ensuing legal battle. This, of course, would impose a serious hardship on all clients having deposits legally "frozen" in the broker's real estate trust account.

C. Earnest Money Down Payment

The initial down payment, called earnest money, and additional down payments are to be deposited in the trust account in accordance with the contract. The offer to purchase is explicit as to the handling of these funds. Provisions from the contract cover the following issues:

- (1) *Application of Fund to Purchase Price:*
Earnest money, if held by broker, shall be held in selling broker's trust account prior to acceptance of offer and thereafter in listing broker's trust account until applied to the purchase price at closing or disbursed as provided herein or permitted by law.
- (2) *Earnest Money Receipt.*
Broker acknowledges receipt of initial earnest money as per line 12 of the above offer.

It becomes apparent, then, that the broker cannot reduce the earnest money deposit by refunding a portion to the buyer, by paying the buyer's expenses, or by paying the seller's expenses prior to closing.

The selling broker is authorized by the offer to purchase to disburse the trust funds held to the listing broker in the case of a co-brokerage. The listing broker is authorized to disburse the trust funds when the transaction is closed. A transaction is closed when the buyer has received and accepted a deed or land contract from the seller and the seller or seller's agent has received from the buyer or the buyer's representative the payment stipulated in the contract. Some of the other typical bases for refunding client's monies are, as follows:

- The seller has not accepted the offer and the offer has expired.
- The seller rejects the offer.
- The buyer retracts the offer prior to the delivery of the accepted copy.
- The seller makes a counteroffer not acceptable to the buyer.
- The accepted offer will not result in a closing because the buyer is unable to obtain the stipulated financing or sell the contingent property.
- The seller and buyer mutually agree to cancel the contract.

The offer also contains provision for defaults on the part of the buyer or on the part of the seller. The standard offer to purchase provides:

If the transaction fails to close and the parties fail to agree on the disposition of earnest money, then earnest money held by broker shall be disbursed as follows:

- (1) To buyer, unless seller notifies buyer and broker in writing no later than 15 days after the earlier of the buyer's written demand for return of the earnest money or the date set for closing, that seller elects to consider the earnest money as liquidated damages or partial payment for specific performance.
- (2) To seller, subject to amounts payable to broker, provided the above notice is given and neither party commences a lawsuit on this matter within 30 days after receipt of the notice.

In making the disbursement, the broker shall follow procedures in Section RL 18.09(4), Wis. Adm. Code.

Disbursement of earnest money does not determine the legal rights of the parties in relation to this agreement.

Both parties agree to hold the broker harmless from any liability for good faith disbursement of earnest money in accordance with this agreement or present Department of Regulation and Licensing regulations concerning earnest money.

From this language, it is quite clear that the seller, not the broker, determines whether or not a default has taken place. The seller may choose to sue for specific performance, for actual damages, or accept the liquidated damages of the contract. See book subsections 5.08A and B. The best advice is to consult your attorney.

It is recognized that reasons for refunding may be more explicit in some cases than others. It is advisable to get a written release with both parties authorizing the refund. The Department has approved a standard release form (WB-45). It should be signed by both parties. Usually, the broker must return the deposit to the buyer when demanded on the basis of one of the above conditions, even though the broker may have a right to sue the seller for his or her commission. The broker is reminded that in the case of an accepted offer, the seller may have a choice of action regarding that accepted offer.

The Department has adopted rules which govern when a disbursement of funds by the broker is proper. This rule, RL 18.09(1), lists the following circumstances where disbursement is proper and will not subject the broker to disciplinary action:

- (1) Upon the rejection of an offer to purchase, lease, exchange, or option on real estate or a business opportunity;
- (2) Upon the withdrawal prior to acceptance of an offer to purchase, a lease, an exchange, or an option on real estate or a business opportunity;
- (3) Upon the closing of the transaction;
- (4) Upon authorization granted within the contract;
- (5) Upon securing a written agreement which is signed by all parties having an interest in the trust funds;
- (6) Upon depositing the trust funds into a court having jurisdiction over a civil action involving all parties having an interest in the trust funds;
- (7) Upon order of a court; or
- (8) Upon a good faith decision based on advice of an attorney not representing any party to the contract.

To cover those situations where disputes may arise, the Department's rules also require that notification be given by the broker when he or she decides to make a disbursement of trust funds to which all parties to the

contract do not agree. The rule, RL 18.09(4), requires the broker to notify the parties in writing that a disbursement is to be made. The notification must be sent by certified mail and must indicate to whom and when the disbursement will be made. The broker cannot make the disbursement until at least 30 days after the date of the notice.

D. Escrows

A broker may hold occupancy or possession escrows, escrows for final proration of taxes, and escrows for charges incurred by a seller but not yet billed without having a separate escrow agreement prepared by the parties or by an attorney. Rule RL 18.07. These escrows would be held to cover events occurring following closing of the transaction. If the broker does hold escrows without a separate escrow agreement, the closing statement for the transaction must show that the broker is holding the funds.

E. Credit Report and Appraisal Fees

Where credit reports, appraisals, or other advance fees are required to be paid for prior to closing, the broker has several ways to handle the funds. A word of caution is in order at this point to remind the broker that he or she cannot use the earnest money deposit to pay these expenses. The contract specifies that the earnest money is to apply to the purchase price. The broker may advance his or her own personal funds or may receive specific funds from the buyer with the agreement that they are to be used for the credit report and appraisal. A separate receipt should be issued for these funds. The funds should then be deposited into the broker's trust account to be disbursed when the broker receives the billing. Another way to handle the credit report fee and appraisal fee is to have the buyer make the check payable to the lending institution where the loan application is being made.

F. Proceeds of a Sale

When the real estate sale has progressed to the closing day, the broker will be required to disburse the funds held in the trust account. Any funds received at the closing called "proceeds of the sale" are trust funds and must be deposited into and disbursed out of the broker's real estate trust account. The real estate sale is normally considered to be consummated when the buyer has received and accepted a deed, land contract, or other evidence of title from the seller, and the seller or seller's agent has received from the buyer or buyer's authorized

representative the payment stipulated in the contract of sale. It is at this point that we now know to whom the funds held in the trust account belong. They belong to the seller or the buyer in the case of escrows. The broker is reminded that he or she is still handling the funds as a trustee of the parties. The trust relationship binds the broker until the funds have been disbursed to satisfy the parties' obligations and the checks have cleared the bank.

Final settlement may be made in several ways:

- The lending institution may make all the disbursements including the broker's commission check.
- With the exception of escrows, the broker may remit the trust funds he or she is holding on behalf of the seller directly to the seller, who will make the disbursements, including the broker's commission.
- The broker may act as the seller's or buyer's disbursing agent. In this capacity, the broker is a trustee. All the funds received on this transaction, earnest money, additional down payments, and proceeds of the sale must be deposited in the trust account and then disbursed directly to the parties due the funds. Under no circumstances should the broker deposit these funds into his or her business account. The only funds the broker is entitled to deposit in the business account are those funds which are irrevocably his or hers. These funds would consist of the commissions, according to the listing contract, or reimbursement of funds expended on behalf of the seller *prior* to the closing. The broker's commission, fee, and reimbursements must be removed within 24 hours of the consummation of the sale. Rule RL 18.09(1).

G. Rental Receipts

Caution should be exercised in the handling of rental receipts and disbursements. Rental receipts, like other trust funds, must be deposited in the trust account within 24 hours of their receipt. Payment for repairs, remittances to the owner, and other expenses cannot be disbursed in anticipation of the regular rent receipts, regardless of the net worth of the property owner. When expenses are paid in anticipation of the regular receipts, the specified account is actually overdrawn and the broker is, in fact, using someone else's money for the payment of the expense. This violation has serious overtones. The broker would be wise to withhold a sum sufficient to cover those expenses anticipated after

accounting to his or her principal but before receiving the next month's rents. However, according to rule RL 18.10, the broker's personal funds set aside for this purpose in the account should not exceed \$100.00. It is also very important that the rental records are posted currently even in those cases involving out-of-town landlords or where an accounting is made periodically.

H. Property Management

Property management has in recent years become a more important segment of the real estate industry. The broker may manage only one building as a convenience to his client or may actively seek new properties to manage. It makes no difference whether the broker manages one unit or a hundred units, he or she is in the specialized real estate field of property management. Once the broker has elected to manage property, many questions arise which should be answered, preferably in writing. The broker should insist on a management contract between the owner-principal and broker-agent. There is no Department-approved standard management contract. Therefore, the principal and agent are advised to consult with their attorneys. A management contract should spell out the duties and responsibilities of both parties.

The following are a few of the items to be covered but are not necessarily limited to only these. Each contract should meet the need and desires of the parties to the contract.

1. Management fee.
 - (a) _____ of the first month's rent for new tenants.
 - (b) _____% of the gross monthly rentals or receipts.
 - (c) Other _____
2. Reports to management due.
 - (a) Frequency.
 - (b) Rendered not later than _____ month.
 - (c) Sent to.
3. Advertising paid by lessor or agent?
4. Employees are the responsibility of lessor or agent?
5. What is the dollar limit the agent may disburse on a single transaction?
6. Who receives the benefit of discounts?
7. Who is authorized to sign the lease?
 - (a) Lessor only.
 - (b) Agent only.
 - (c) Either.
8. Is a separate trust account required?

I. Security Deposits

In 1984, the Department amended rule RL 18.02(3)(d) to provide that all security deposits are real estate trust funds. However, when the broker has an ownership or other type of interest in a rental property, the broker may place security deposits for that property in a real estate trust account or shall provide in the lease for security deposits to be held in an account maintained in his or her name. Rule RL 18.1(d). The approved house lease (WB-18) and apartment lease (WB-20) state:

If the person holding the security deposit is a licensed real estate broker, acting as agent, it shall be held in the broker's trust account.

J. Land Contract Payments

Land contract payments received by the broker on property owned by the broker, which include taxes and insurance, are subject to the trust account rules. The taxes and insurance funds which are received by the broker must be placed in the broker's real estate trust account.

K. Records Retention

The broker is required to retain in his or her possession for a period of three years all documents connected with a real estate transaction. Rule RL 24.14. The following is a partial list of some of the major documents to be retained but is not limited to them alone. If the broker has any doubt, he or she should call or write the Wisconsin Department of Regulation and Licensing.

- Offers to Purchase (Accepted — Rejected — Countered)
- Leases
- Option
- Mortgages/Land Contracts
- Notes
- Trust Fund Receipts
- Invoices
- Closing Statement
- Deposit Slips
- Cancelled Checks
- Monthly Account Statements
- Journals
- Ledgers
- Written Account Reconciliations
- Written Trial Balance of Ledger.

16.10 ACCOUNT RECONCILIATION

An account reconciliation is required to be written out each month as long as there are funds in the trust account other than the broker's personal funds used to cover service charges. The reconciliation must be filed with broker's account statements for possible examination.

Each month, the broker receives an account statement from the bank, credit union, or savings and loan at which the broker has his or her trust account. At that time, the broker must reconcile the balance with his or her bookkeeping records and review the status of all items remaining in trust and escrow accounts as of that date. It is customary for banks, credit unions, or savings and loans to provide a form for the reconciliation of the account on the back of the monthly statement. Using the illustrations shown in book § 16.13, the procedure is as follows:

Account Reconciliation		
2-29-72	Balance per bank statement	\$4,318.00
2-28-72	Plus Deposits Received—Recorded on Broker's Books but not Credited to Bank Statement	<u>1,435.00</u>
	TOTAL	\$5,753.00

Less Outstanding Checks (Issued but not Returned by Bank)		
2-28-72	108	\$1,120.00
2-29-72	109	125.00
2-29-72	110	170.00
2-29-72	111	30.00
2-29-72	112	40.00
2-29-72	113	110.00
		<u>1,595.00</u>
	Reconciled Bank Balance (Must Agree with Journal and Ledger)	<u>\$4,158.00</u>

Trust Record Reconciliation (Trial Balance — Ledger)		
DATE	PARTIES	BALANCE
2-29-72	Broker's Personal Funds	43.00
The Following are from the Sales Ledger:		
2-28-72	WILLIAMS—BLACK	315.00
2-06-72	THOMAS—EDWARDS	2,500.00
2-10-72	SCOTT—EVANS	500.00
The Following are from the Collections Ledger:		
Various	DAVIDSON	200.00
Various	EDWARDS—MALLAMS	100.00
The Following are from the Security Deposit Ledger:		
1-02-72	FOGARTY	250.00
1-03-72	BARNABY	<u>250.00</u>
		\$4,158.00

After reconciling the account statements with the journal and ledger balances, the broker should then examine the nature of items remaining in the trust account. A monthly review of this type enables the

broker to bring the trust account up to date. In the event any of the deposited items were inadvertently retained beyond the agreed upon release date, they can be refunded or returned, providing the items can be legally released in accordance with the terms of the deposit agreements. This monthly review also affords the broker the opportunity to check the maturity dates of the notes that he or she is holding as escrow. It serves as a reminder to make certain that maturing notes are redeemed timely. Once again, caution is advised in the use of notes. Outstanding checks should be examined for age. Payees holding old checks (over six months old) should be notified to cash them. The law limits the time in which a bank is obligated to cash a check. Most banks will not honor a check over six months old. If they are lost, payment should be stopped and new checks issued to replace them.

It is not enough to merely reconcile the account statement with the journal. It is also the broker's obligation to reconcile the statement with the ledger. Reconciliation is a function that should be performed by the broker. If someone else in the broker's office is doing the work, he or she should understand the law and the broker's responsibility for maintaining trust records. The Department looks to the broker. While the broker may delegate the authority to do the work, the broker cannot relieve himself or herself of the responsibility. The broker should review the reconciliation to insure its accuracy. In some cases, the hired accountant does not reconcile the broker's ledger with the account. This may be attributable to unfamiliarity or lack of understanding of the laws relating to the requirements in accounting for real estate funds. In such cases, the broker should acquaint the accountant with the trust fund regulations.

16.11 BROKER TRUST ACCOUNT PROBLEM AREAS

A. Self-dealing by Broker

The real estate broker who buys and sells real estate in his or her own name is subject to the same trust account rules and regulations as when acting as an agent. Earnest money, additional down payments, taxes, and insurance received with a mortgage or land contract payment must be deposited in the trust account.

1. *Sale of Broker-owned Property* The earnest money and any additional down payment received from the buyer on the purchase of the broker owned property are trust funds. These funds belong to the buyer and the broker may have a claim on these funds based on the offer to purchase. These funds become the property

of the broker when the transaction is consummated.

2. *Purchase of Property by the Broker.* When the broker purchases property for investment or resale, the earnest money shown in the offer to purchase must actually be deposited in the broker's real estate trust account. If the broker pays the earnest money directly to the seller, this fact should be noted in the offer to purchase. The broker should also have the seller sign the earnest money receipt.

3. *Rental Security Deposits.* If the broker or salesperson has an ownership interest in a rental property, rule RL 18.03(1)(d) requires that he or she place security deposits related to that property in a real estate trust account or shall provide in a lease for security deposits to be held in an account maintained in the name of the owner or owners.

4. *Mortgage or Land Contract Payments.* Payments received on a mortgage or land contract held by the broker may contain trust funds. The principal and interest received in each payment is irrevocably the broker's; therefore, they are not trust funds. However, the taxes and insurance payments included in the payment are trust funds and should be deposited in the real estate trust account. These funds do not belong to the broker. The broker and buyer by mutual agreement decided to include in each payment an amount sufficient to pay the real estate taxes and insurance premiums when they become due. These funds belong to the buyer and the broker is responsible for their correct application.

B. Abstract and Title Policy Payment

The payment of the abstract or title policy, as with any of the seller's expenses, must be made from the trust account. The broker may order the abstract/title policy and be billed for it. This is done as the agent of the seller. The broker acknowledges this expense as the seller's by including it on the closing statement as an expense to be paid by the seller. It follows then that funds received by the broker for payment of the abstract or title policy expense are trust funds.

C. Payment of Commission to Co-Broker Salespersons

Payment of part of the broker's commission to the co-broker or salesperson is the broker's business expense. This expense arises from written or oral agreements between the listing broker, their salespeople, or selling broker, not the seller. Therefore, the broker

should pay these expenses out of his or her business account — not from the trust account.

D. Personal Funds Identified

Administrative rule RL 18.10 allows the broker to have personal funds in the trust account of not less than \$0.00 nor more than \$100.00. They may be used only to defray expenses of maintaining the trust account. The personal funds must be set up on a ledger sheet in the same manner as are client funds.

16.12 SUMMARY

1. The latest amendments to the license law require that all real estate brokers maintain a separate trust account registered with the Department. All funds belonging to parties involved in real estate transactions must be deposited in the trust account pending the outcome of the transaction.

2. The broker must maintain a bookkeeping system for the recording of receipts and disbursements of all trust funds.

3. The fact that a real estate broker may have personal funds in his or her real estate trust account could endanger his or her clients' money as well. In the event of a lawsuit involving the real estate broker, it is possible that the attorney for a third party could obtain a court order and tie up the entire trust account. This, of course, would prevent the broker from refunding monies belonging to his or her clients or withdrawing funds that are necessary for the closing of a particular transaction. Such possible danger requires that the broker be prompt in withdrawing all funds relative to a particular transaction within 24 hours after the closing of that transaction. The broker is further reminded that he or she is not allowed to maintain more than \$100 of his or her own money in this trust account, which must be specifically identified in the ledger, and such funds are for the purpose of bank service charges only. It is recommended that the broker not have any personal funds in the Real Estate Trust Account. In most cases, the broker can arrange with the bank to deduct trust account service charges from his or her general checking account.

The broker is also cautioned not to use his or her trust account as a depository for non-real estate items. This trust account is solely for funds collected in connection with real estate transactions and not for the safekeeping of such extraneous items as lodge funds, fraternal dues, bowling league fines, and the like.

4. Advances for such expenses as abstracts, credit reports, and so forth prior to closing are definitely

out of order. Such expenditures should be made from the general account since the broker has no assurance that his or her particular real estate transaction will close. Further, the broker has no right to withdraw the earned commission prior to closing since the broker is required to retain these funds until the consummation of the transaction or termination of the contract. In cases where the real estate broker is selling property that he or she owns, the down payment must remain in the trust account until it is refunded or the deal is actually closed. The real estate broker, in no case, should misuse the trust account for payment of personal bills.

5. The broker is required to reconcile the trust account records with the account statements once a month. This will give him or her an opportunity to clear out any items that are open but not active. Such efficiency will pay off in the long run.

6. The real estate broker should not try to outguess the seller on a marginal offer. The broker has no alternative but to deposit all trust funds received.

7. If real estate brokers are going to make continued progress in the real estate field, they must command increasing respect from the public as being professional. Real estate brokers should take the lead of established professions and handle trust funds in an ethical and proper manner.

Real estate brokers are compelled by the law, by the listing contract, by the offer to purchase, and bound by standards of high conduct to handle real estate trust funds in a professional manner.

16.13 HYPOTHETICAL EXAMPLE AND ILLUSTRATIONS OF RECORD KEEPING

The following hypothetical example illustrates the typical record keeping system for showing receipts and disbursements of trust funds. The example is based on a series of transactions that occurred in a hypothetical real estate office in 1972. The graphics were first published in the 1972 edition of *Wisconsin Real Estate Law* and are reprinted with the permission of the Department of Regulation and Licensing. The sums involved in the examples for such items as commissions, earnest money deposits, and closing expenses reflect real estate practice in 1972. You should not regard those figures as reflective of current real estate practice. Instead, you should simply follow the illustrations to understand the process for documenting the various entries and for reconciling the trust account.

Illustrations of Procedures

The following events took place in a real estate brokerage office during February 1972:

Date

- (a) 2-1 The broker adds \$50.00 of his own money to the trust account in order to reestablish a balance of personal funds.
Comment: Bank charges have depleted the broker's personal funds — to protect funds belonging to others from being misused, he reestablishes his own balance.
- (b) 2-2 Barnaby, a tenant, pays his rent amounting to \$150.00. The landlord is R. Davidson.
Comment: Record the transaction in the journal and post to the ledger. R. Davidson remains a principal from a prior period.
- (c) 2-3 Barnaby makes a \$250.00 payment for a security deposit. The journal is posted and the security deposit ledger is also posted, making certain that enough lines are available for the eventual payout.
Comment: If the security deposit is to be received over a period of time, such as \$50.00 per month until the agreed upon amount is reached, even more lines in the ledger would be left open to handle this type of transaction.
- (d) 2-4 Fogarty, a renter, and Edwards, the vendee in a land contract transaction, each made their respective monthly payment of \$150.00 and \$225.00. The journal is posted and each ledger is posted. Davidson is the lessor and Mallams is the vendor.
Comment: Care should be taken to insure complete and accurate records. Make sure the proper ledger number is written next to each transaction in the journal.
- (f) 2-5 Wilson makes an offer to purchase in the amount of \$38,000.00 for the property located at 11344 N. Lake Shore Drive. He tenders \$200.00 to be used as an earnest money deposit and also gives the broker \$85.00 for a credit report and survey.
Comment: Postings are made to the journal. A ledger account is set up and the proper information including the names of the parties, the date, the property address, and the amount is entered. It should be noted in this case that the \$85.00 was received as a separate item and was not shown on the offer to purchase. As such, a payout for the required service could be made prior to closing as agreed between the buyer and broker. A separate receipt should be issued for the \$85.00 specifying its purpose.
- (ee) 2-6 Ms. Rose Thomas offers to purchase a supper club located at 600 Badger Avenue for \$65,000.00. The seller is Walter Edwards, and Ms. Thomas gives the broker a note in the amount of \$2,500.00 which is to be redeemed upon acceptance. Accepting a note in lieu of cash leads to trouble so often that a broker should be especially cautious. The use of the note in this transaction is merely for illustration purposes.
Comment: Since this initial deposit does not involve any cash, an entry is not made to the journal. However, a ledger sheet is prepared for this transaction. This ledger must be set up on the day the note is received *not* on the redemption date.
- (h) 2-8 Williams makes an offer of \$14,575.00 for the property located at 2320 North Country Club. The seller is Hans Black. One dollar is tendered as an earnest money deposit.
Comment: The broker enters the transaction in the journal and posts the ledger as the transaction takes place. The one dollar is deposited to the bank account within 24 hours (banking by mail is most convenient). The posting is done each day a transaction occurs.
- (i) 2-10 A payment of \$10.00 by check #101 is made to the Central Credit Bureau. Wilson had given this money to the broker specifically for this purpose. Ms. Scott tenders a \$500.00 earnest money deposit on property located at 1 Sunrise Drive. Her offer is for \$72,500.00.
Comment: Funds may be paid out prior to closing when they have been received by the broker for purposes other than down payments — or when the contract so states, or when a written agreement, signed by *both* buyer and seller, provides for it.
- (j) 2-12 Wilson's offer is accepted and upon delivering the accepted contract to him, the broker requests the payment of \$1,300.00 as provided for.
Comment: If Wilson does not have the \$1,300.00, a determination should be made as to when payment would be made. The broker would not deliver the accepted contract and would inform the seller *in writing* of the new circumstances.
- (l) 2-14 Black accepts Williams' offer and \$1,999.00 is received from Williams who is given a receipt for that amount.

Comment: Williams is given a copy of the accepted contract, an entry is made in the journal, and Williams' ledger is posted.

- (m) 2-19 Ms. Thomas redeems her note in the amount of \$2,500.00.

Comment: Now the journal entry is made because cash is involved. The ledger had been previously set up when the note was received.

- (n) 2-25 The Wilson-Jackson transaction is to be closed. The broker is acting as the banker (i.e., he will receive all the money and make all the payouts). \$30,000.00 is received from the bank. The closing statement shows \$6,287.00 in cash due from the buyer.
 (o)
 (p)
 (q)
 (r)
 (s)
 (t) Checks #102 through #106 are, as follows: Check #102 Pioneer Title Co. — title policy \$102.00; Check #103 John Thomas — attorney fees \$25.00; Check #104 Joseph McMullen — survey \$75.00; Check #105 Broker's commission, \$2,660.00; Check #106 Seller's proceeds, \$35,000.00.

Comment: Be sure that the journal and ledger both indicate the payee of the disbursement checks. Commission due the broker must be removed from the trust account within 24 hours of closing. All expenses essential to the transaction, unless prepaid, must be paid from the trust account.

- (u) 2-28 Dairyland Savings and Loan receives check #107 in the amount of \$2,000.00. They are acting as banker and return their check in the amount of \$1,435.00 which includes the broker's commission of \$1,120.00 and escrows for a title policy of \$115.00 and an occupancy escrow of \$200.00. Check #108 is written to the broker in the amount of \$1,120.00.

Comment: The entire amount of \$1,435.00 received from the savings and loan is deposited to the trust account. The broker's

commission is immediately removed leaving the escrows in trust. An alternate method would be for the broker to write the initial check in amount of \$565.00 to the savings and loan and the commission check of \$1,120.00 to himself. This then would leave \$315.00 in trust for the escrows.

- (z) 2-29 Mr. Davidson's February statement is prepared. Check #111 is written to the Wisconsin Gas Co. for \$30.00. Al Bander receives check #112 in the amount of \$40.00 for plumbing repairs. The broker receives check #113 for \$110.00. This is 10% of the gross collections plus 1/2 the first month's rent from Barnaby. \$105.00 is charged to the Davidson account and \$5.00 is charged to the Mallams account. This eliminates the need to write several commission checks when several transactions are accounted for at one time. The principal, Davidson, receives check #109 for \$125.00. Mallams receives check #110 for \$170.00 — a land contract payment. Bank charges of \$2.00 and \$5.00 for service charges and for check imprinting, respectively, are entered in the journal and are posted to the broker's personal funds ledger.

Comment: The accounting statement to the principal is similar to the closing statement in that a copy must be maintained in the broker's files for at least three years and the broker's commission must be removed within 24 hours.

This illustration is intended to demonstrate the minimum standards required. It should be noted that as business transactions increase in number, the system used would have to become proportionately more sophisticated and refined as by using machine accounting or computer services. In all events, a trial balance *must* be readily available at all times.

CLIENT

Mtge Collection Sales

S-4
Selling: ELLEN CHARLES Location of Property: 1 SUWASE DRIVE
Buyer: JOAN SCOTT Type of Transaction: SALE Price: 22,500.00

Date	Name of Party	Debit	Credit	Disbursed	Balance
2/10	EARNEST MONEY DEPOSIT		500 /		500 /

S-3
Selling: WALTER EDWARDS Location of Property: 600 BADGER AVE
Buyer: ROSE THOMAS Type of Transaction: SALE Price: 65,000.00

Date	Name of Party	Debit	Credit	Disbursed	Balance
2/6	EARNEST MONEY DEPOSIT (Home 25000)				
2/9	REDEEMED ABOVE NOTE	7500 /			7500 /

S-2
Selling: HANS BLACK Location of Property: 2320 N. CANTON ST. U3
Buyer: PATRICK WILLIAMS Type of Transaction: SALE Price: 14,575.00

Date	Name of Party	Debit	Credit	Disbursed	Balance
2/8	EARNEST MONEY DEPOSIT				
2/14	ADD'L DOWNPAYMENT		1000 /		1000 /
2/28	DAIRYLAND S&L LOAN		107 /		107 /
2/28	DAIRYLAND S&L - Cont'd Escrow		1435 /		1435 /
2/28	KENNETH CLARK - Comm	109 /			109 /

S-1
Selling: KELLY JACKSON Location of Property: 1124 N. WEST STREET D4
Buyer: RICHARD WILSON Type of Transaction: SALE Price: 32,000.00

Date	Name of Party	Debit	Credit	Disbursed	Balance
2/5	EARNEST MONEY DEPOSIT		200 /		200 /
2/5	FAN CREDIT FEE & SURVEY		85 /		85 /
2/10	CENTRAL CREDIT BUREAU		10 /		10 /
2/12	ADD'L DOWNPAYMENT - AKA		1500 /		1500 /
2/25	PRIMEA F&B - Misc. Central Bk		30,000 /		31,575 /
2/25	FAN WILSON - Closing Funds		1287 /		32,862 /
2/25	PRIMEA F&B - Truist		102 /		32,760 /
2/25	JOHN THOMAS - Attorney Fee		25 /		32,735 /
2/25	JOHN THOMAS - Survey		75 /		32,660 /
2/25	KENNETH CLARK - Comm	109 /			32,551 /
2/25	KELLY JACKSON - Prorated	46 /			32,505 /

L/C
Collection
Ledger

Vendor	Amount
111 TAXES	753
214 F&B	214
228 H. MALL	228
228 KENNE	228

K/E
Pe

Amount	Pe
2,111	
2,111	
2,111	
2,111	

SECURITY DEPT		NAME : R. DAVIDSON		PAYER : 4335 S. 72ND ST (Apt 11)	
SECURITY DEPT		ADDRESS		CITY	
NAME		ADDRESS		CITY	
TENANT		CREDIT LIMIT		DUE	
213 BARBARA		2500		2500	
213 BARBARA		2500		2500	

Rental

[illegible]

rtg

1600 N. SILVER DR. Vendor: H. Mall
Vendor: Edwards Tax Exemow (Com-
EX

Principals: R. Davidson

Security Deposit

1

Printed by R. Davidson

Security Deposit

УМНОВ -
1972
23 БАРНАУЛ

1

Seller <u>ELLEN CHARLES</u>	Location of Property <u>1 Sunrise Drive</u>
Buyer <u>JOAN SCOTT</u>	Type of Transaction <u>Sale</u> Price <u>72,500.00</u>

JOAN SCOTT

Type of Transaction SALE Price 72,500.00

2. 10 EARNEST MONEY DEPOSIT

Name of River

1

Dec 21

Disbury

Balance	
---------	--

Seller WALTER EDWARDS Location of Property 600 BADGER AVE

ROSE THOMAS

TYPE OF TRANSACTION SALARY

Price \$5,000.00

219	NOTE	RECEIVED
-----	------	----------

26	EARNEST MONEY DEPOSIT - NOTE \$3,500.00
----	---

11	

1

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100
---	---	---	---	---	---	---	---	---	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	----	-----

Seller HANS BLACK Location of Property 2320 N. COUNTRY CLUB

PATRICK WILLIAMS

Type of Transaction SALE Price 14,575

Date	Name or Payee	Check No.	Debits	Disbursed	Balance
1972					

2.8 EARNEST MONEY DEPOSIT

2.14 Additional Down Payment Accepted

23 Dairyland Savings Co.

[illegible]

TRUCK POLICY DIS
CLOSURE 20

[illegible][illegible][illegible]

--

BANK RECONCILIATION

130W C-1

500	200
500	350
500	500
375	375
345	345
305	305
200	200

500 C-2

= Pm Conn.)

50	50
275	275
105	105
100	100

[illegible][illegible]

CASH JOL & DISE

IN WISCONSIN OFFER TO PURCHASE - THIS CONTRACT
Approved by Wisconsin Real Estate Board

Offered by: Richard Wilson Madison Wisconsin February 5, 1972

The undersigned Buyer, Richard Wilson, hereby offers to purchase the property known as 1144 So. Lake Shore Drive in the City of Madison, County of Ozaukee, Wisconsin, more particularly described as:

having a frontage of about 159 feet, with a depth of about 360 feet, at the price of Thirtieth Eight Thousand Dollars (\$28,000.00) and on the terms and conditions as follows:

Down Payment in cash Two Hundred (\$200.00) Tendered herewith. Additional Down Payment in cash One Thousand Three Hundred (\$1,300.00) to be paid upon acceptance of offer (or on _____) and the balance in cash at closing or as hereafter set forth.

THE BUYER'S OBLIGATION TO CONCLUDE THIS TRANSACTION IS CONDITIONED UPON THE CONSUMMATION OF THE FOLLOWING:

(If this offer is subject to financing or the sale of other property it must be so stated here. If none so state.) This offer is subject to financing in an amount of not less than \$30,000.00, at a rate not to exceed 7%, and for a term of not less than 25 years. The monthly payment (including principal, interest, taxes and insurance) is not to exceed \$275.00.

APPLICATION OF FUNDS TO PURCHASE PRICE: _____

DELIVERY OF ACCEPTED OFFER: _____

WHO RETAINS FUNDS: _____

WHO RETAINS FUNDS IN CO-BROKERAGE ARRANGEMENT: _____

DEPOSIT PAYMENTS: _____

BUYER'S DUTY: _____

EARNEST MONEY RECEIPT

Received of Richard Wilson Two Hundred (\$200.00) Dollars.

The undersigned hereby agrees to hold same in his authorized Real Estate Trust Account in North Shore Bank in Shorewood Wisconsin, or transmit the same in accordance with the terms of the above offer.

February 5, 1972 Ken Clark Broker

CASH RECEIPT

LEDGER	DATE	RECEIVED FROM
	1-31-72	BALANCE BRT
	2-2	KENNETH CLAR
C-1	2-2	BARNABY
C-3	2-3	BARNABY
C-3	2-4	FOGARTY
C-2	2-4	EDWARDS
S-1	2-5	WILSON
S-1	2-5	WILSON
S-2	2-8	WILLIAMS
S-1	2-10	CENTRAL CREDIT
S-4	2-10	SCOTT
S-1	2-12	WILSON
S-2	2-14	WILLIAMS
S-3	2-19	THOMAS
S-1	2-25	WILSON-WISC.
S-1	2-25	WILSON-BUYER
S-1	2-25	PIONEER TITLE C
S-1	2-25	JOHN THOMAS-A
S-1	2-25	JOS McMULLEN
S-1	2-25	KEN CLARK-C
S-1	2-25	KELLY JACKSON
S-2	2-28	DAIRYLAND S+L
S-2	2-28	DAIRYLAND S+L
S-2	2-28	KENNETH CLARK
C-1	2-29	R.DAVIDSON-REA
C-2	2-29	H.MALLAMS-LAND
C-1	2-29	WISCONSIN GA
C-1	2-29	ALBANDER PLUM
C-1	2-29	KEN CLARK-CC
-	2-29	BANK SERVICE
-	2-29	BANK CHARGE F

February 5 19 72 No. 1024

Richard Wilson

Pay to the order of Ken Clark Real Estate Trust \$ 285.00

Two Hundred Eighty Five and no/100 --- Dollars

Earnest Money 200.00
Cr. Rpt.-Survey 85.00

Richard Wilson

Pay to the order of Ken Clark Real Estate Trust \$ 1,300.00

Pay to the order of Ken Clark Real Estate Trust \$ 6,287.00

February 25 19 72 No. 102468

Wisconsin Central Bank

Pay to the order of Ken Clark Real Estate Trust \$ 30,000.00

JOURNAL

(A Chronological Record Permanently Bound)

Date	IDENTIFICATION Parties to Transaction OR Payee	*Ledger No.	Check No.	Received	Disbursed	Total Trust Balance
1972	Balance Carried Forward.....					500.00
(a) 2-1	Addition to Broker's Personal Funds.....	Broker		50.00		550.00
(b) 2-2	BARNABY—R. DAVIDSON Rent Collection.....	C-1		150.00		700.00
(c) 2-3	BARNABY—R. DAVIDSON Security Deposit.....	C-3		250.00		950.00
(d) 2-4	FOGARTY—R. DAVIDSON Rent Collection.....	C-3		150.00		1100.00
(e) 2-4	EDWARDS—MALLAMS Land Contract Collection.....	C-2		225.00		1325.00
(f) 2-5	WILSON—JACKSON Earnest Deposit.....	S-1		200.00		1525.00
(g) 2-5	WILSON—JACKSON For Credit Rpt. & Survey.....	S-1		85.00		1610.00
(h) 2-8	WILLIAMS—BLACK Earnest Deposit.....	S-2		1.00		1611.00
(i) 2-10	CENTRAL CREDIT BUREAU.....	S-1	101		10.00	1601.00
(j) 2-10	SCOTT—CHARLES Earnest Deposit.....	S-4		500.00		2101.00
(k) 2-12	WILSON—JACKSON Accepted Additional D/P.....	S-1		1300.00		3401.00
(l) 2-14	WILLIAMS—BLACK Accepted Additional D/P.....	S-2		1999.00		5400.00
(m) 2-19	THOMAS—EDWARDS Note Redeemed.....	S-3		2500.00		7900.00
(n) 2-25	WILSON—JACKSON Wisconsin Central Bank.....	S-1		30000.00		37900.00
(o) 2-25	WILSON—JACKSON Buyers Closing Funds.....	S-1		6287.00		44187.00
(p) 2-25	PIONEER TITLE CO.—Title Policy.....	S-1	102		102.00	44085.00
(q) 2-25	JOHN THOMAS—Attorney's Fees.....	S-1	103		25.00	44060.00
(r) 2-25	JOSEPH McMULLEN—Survey.....	S-1	104		75.00	43985.00
(s) 2-25	KENNETH CLARK—Commission.....	S-1	105		2660.00	41325.00
(t) 2-25	KELLY JACKSON—Sellers Proceeds.....	S-1	106		35000.00	6325.00
(u) 2-28	DAIRYLAND SAVINGS & LOAN—Closing.....	S-2	107		2000.00	4325.00
(v) 2-28	DAIRYLAND S & L Williams—Black.....	S-2		1435.00		5760.00
(w) 2-28	KENNETH CLARK—Commission.....	S-2	108		1120.00	4640.00
(x) 2-29	R. DAVIDSON—Rent Proceeds.....	C-1	109		125.00	4515.00
(y) 2-29	H. MALLAMS—Land Contract Payment.....	C-2	110		170.00	4345.00
(z) 2-29	WISCONSIN GAS CO.—Gas Utility.....	C-1	111		30.00	4315.00
(aa) 2-29	AL BANDER—Plumbing Repairs.....	C-1	112		40.00	4275.00
(bb) 2-29	KENNETH CLARK—C-1 \$105.00 C-2 \$5.00.....	C-1 & C-2	113		110.00	4165.00
(cc) 2-29	BANK CHARGE—Service.....	Broker	DM		2.00	4163.00
(dd) 2-29	BANK CHARGE—Check Imprinting.....	Broker	DM		5.00	4158.00
(ee)	SEE LEDGER S-3					

***LEDGER SYMBOLS**

C = Collections (Rentals, Mortgage Payments Etc.)
S = Sales

SALES LEDGERS

(Each Ledger Sheet a Separate Page)

BROKER'S PERSONAL FUNDS

KENNETH CLARK

Date	Description or Payee	Check No.	Received	Disbursed	Transaction Balance
(a) 2- 1-72	Addition to Broker's Funds.....		50.00		50.00
(cc) 2-29-72	Bank Charge—Service.....	DM		2.00	48.00
(dd) 2-29-72	Bank Charge—Check Imprinting.....	DM		5.00	43.00

BUYER RICHARD WILSON

PRICE 38000.00

SALES LEDGER #S-1

SELLER KELLY JACKSON

PROPERTY ADDRESS 11344 N. Lake Shore Drive

Date	Description or Payee	Check No.	Received	Disbursed	Transaction Balance
(f) 2- 5-72	Earnest Money Deposit.....		200.00		200.00
(g) 2- 5-72	For Credit Report & Survey.....		85.00		285.00
(i) 2-10-72	Central Credit Bureau.....	101		10.00	275.00
(k) 2-12-72	Additional Downpayment—Accepted.....		1300.00		1575.00
(n) 2-25-72	Proceeds from Wisconsin Central Bank.....		30000.00		31575.00
(o) 2-25-72	Wilson—Closing Funds.....		6287.00		37862.00
(p) 2-25-72	Pioneer Title Co.—Title Policy.....	102		102.00	37760.00
(q) 2-25-72	John Thomas—Attorney's Fees.....	103		25.00	37735.00
(r) 2-25-72	Jos. McMullen—Survey.....	104		75.00	37660.00
(s) 2-25-72	Kenneth Clark—Commission.....	105		2660.00	35000.00
(t) 2-25-72	Kelly Jackson—Proceeds.....	106		35000.00	—0—

Sales Ledger—One Transaction per page.

Collection Ledger—One Principal per section.

SUBSIDIARY TENANTS LEDGER SHOULD ALSO BE MAINTAINED SHOWING HISTORY OF PAYMENTS—ARREARAGES—SECURITY DEPOSITS, ETC.

SALES LEDGERS

(Each Ledger Sheet a Separate Page)

BUYER Patrick Williams

PRICE 14575.00

LEDGER #S-2

SELLER Hans Black

PROPERTY ADDRESS 2320 N. Country Club

Date	Description or Payee	Check No.	Received	Disbursed	Transaction Balance
(h) 2- 8-72	Earnest Money Deposit.....		1.00		1.00
(l) 2-14-72	Additional Downpayment Accepted.....		1999.00		2000.00
(u) 2-28-72	Dairy Land Savings & Loan.....	107		2000.00	—0—
(v) 2-28-72	Dairy Land Savings & Loan Commissions & Escrows.....		1435.00		1435.00
(w) 2-28-72	Kenneth Clark—Commission.....	108		1120.00	315.00
Memo	Bal. for Escrows. Title Policy 115.00 Occup. 200.00.....				315.00

BUYER Rose Thomas

PRICE 65000.00

LEDGER #S-2

SELLER Walter Edwards

PROPERTY ADDRESS 600 Badger Avenue

Date	Description or Payee	Check No.	Received	Disbursed	Transaction Balance
(ee) 2- 6-72	Earnest Money Deposit—Note \$2500.00.....				
(m) 2-19-72	Note Redeemed.....		2500.00		2500.00

BUYER Joan Scott

PRICE 72500.00

LEDGER #S-4

SELLER Ellen Charles

PROPERTY ADDRESS 1 Sunrise Drive

Date	Description or Payee	Check No.	Received	Disbursed	Transaction Balance
(j) 2-10-72	Earnest Money Deposit.....		500.00		500.00

COLLECTION LEDGERS

Segregated by Principal and by Type (I.E. Rentals—
Security Deposits—Land Contracts, Etc.)

(Each Ledger Sheet a Separate Page)

PRINCIPAL: R. Davidson

LEDGER #C-1

PROPERTY ADDRESS: 433 S. 72nd St.

COMMISSION: 10% + 1/2 First Months Rent

Date	Description or Payee	Check No.	Received	Disbursed	Balance
	Balance Carried Forward.....				200.00
(b) 2- 2-72	Barnaby Apt. I Feb. Rent.....		150.00		350.00
(d) 2- 4-72	Fogarty Apt. II Feb. Rent.....		150.00		500.00
(x) 2-29-72	R. Davidson Rent Proceeds.....	109		125.00	375.00
(z) 2-29-72	Wisconsin Gas Co.—Utility.....	111		30.00	345.00
(aa) 2-29-72	Al Bander—Plumbing Reps.....	112		40.00	305.00
(bb) 2-29-72	Kenneth Clark—Commission.....	Part of 113		105.00	200.00

PRINCIPAL: H. Mallams

LEDGER #C-2

PROPERTY ADDRESS: 1600 N. Silver

COMMISSION: \$5.00 Per Collection

Date	Description or Payee	Check No.	Received	Disbursed	Balance
	Tax Escrow Carried Forward.....				50.00
(e) 2- 4-72	Edwards—Land Contract Coll.....		225.00		275.00
(y) 2-29-72	H. Mallams—Land Contract Pmt.....	110		170.00	105.00
(bb) 2-29-72	K. Clark Commission.....	Part of 113		5.00	100.00

PRINCIPAL: R. Davidson

LEDGER #C-3

PROPERTY ADDRESS: 433 S. 72nd St.

Security Deposits

Date	Description or Payee	Check No.	Received	Disbursed	Balance
1-2-72	Fogarty Apt. II.....		250.00		250.00
(c) 2-3-72	Barnaby Apt. 1.....		250.00		250.00

STATE OF WISCONSIN
DEPARTMENT OF REGULATION & LICENSING
DIVISION OF ENFORCEMENT

LICENSEE: Sunshine Realty
ADDRESS: 1819-11th Ave
Monroe, WI 53566

LICENSEE #: 31263
DATE RECORDS EXAMINED: 2/2/96
COUNTY: GREEN

An examination of your records reveals that you have not complied with Chapter 452 Wisconsin Statutes and the Wisconsin Administrative Code relating to real estate practice.

DESCRIPTION OF VIOLATIONS OF STATUTE OR CODE SECTIONS

- RL 18.13(1) Journal - Last entry in Journal dated 10/26/95, must reference buyer/seller for each entry, check # for each disbursement entries should be made in chronological order
- RL 18.13(2) LEDGER - Be sure to include check #s on disbursements, and to keep running balance.
- RL 18.13(3) Bank Reconciliation - Broker shall reconcile Real Estate Trust Account in writing each month.
- RL 18.13(4) Trial Balance - in conjunction with RL 18.13(3) a written trial balance of all open accounts, at the time of bank reconciliation. See Lemar(6)/DeNure(6) ledger as of 9-2-94; negative \$500 Balance
- RL 18.13(5) Validation - Broker to ensure Bank Reconciliation, trial balance and journal running are in agreement as of the date the account statement reconciled.
- RL 18.10 Contingency prohibited, negative 500 for Lemar/DeNure and negative 90³⁷ Broker's fund (84²⁶ change 11/94) shall be reimbursed immediately. (Also RL 24.15)
- Auditor created Journal for period 1-1-96 to 1-29-96 w/ corresponding bank Reconciliation + trial Balance left copies w/ Broker, Broker will submit copy of February 1996 Journal entries, bank Reconciliation + trial Balance to the Auditor, no later than, March 25, 1996.

VIOLATIONS EXPLAINED TO:

Jorge E. Anderson / Sunshine Realty
(Signature & Position)

AUDITOR:

Jane Kleimert

DATE:

2/2/96

If the person accepting this notice is not the licensee, a copy will be mailed directly to the licensee at the address listed above. Copy mailed to licensee on: _____

EXHIBIT

FRONT'S

C

452 Wis. Stats.

STATE OF WISCONSIN
DEPARTMENT OF REGULATION & LICENSING
DIVISION OF ENFORCEMENT

LICENSEE: Sunshine Realty
ADDRESS: 1819 - 11th Ave
Monroe, WI 53566

LICENSEE #: 31263
DATE RECORDS EXAMINED: 2/2/96
COUNTY: GREEN

An examination of your records reveals that you have not complied with Chapter 452 Wisconsin Statutes and the Wisconsin Administrative Code relating to real estate practice.

DESCRIPTION OF VIOLATIONS OF STATUTE OR CODE SECTIONS

RL 24.08 Agreements in Writing - Broker to submit
copy of accepted offer for Richards (B) Anderson (S)
property @ 605 Monroe St. dated Oct 18, 1995; to
this auditor by March 25, 1996.

RL 18.09 Disbursement of trust funds - Vogel (S) / Armbrust (B)
Broker to follow-up to ensure funds are disbursed
properly - attorneys for both B/s, they are arguing.

VIOLATIONS EXPLAINED TO:

Joyce Anderson - Sunshine Realty
(Signature & Position)

AUDITOR:

Gene Klement

DATE:

2/2/96

If the person accepting this notice is not the licensee, a copy will be mailed directly to the licensee at the address listed above. Copy mailed to licensee on: _____

STATE OF WISCONSIN
BEFORE THE REAL ESTATE BOARD

IN THE MATTER OF THE DISCIPLINARY	:	
PROCEEDINGS AGAINST:	:	STIPULATION
	:	94 REB 065, 95 REB 040
JOYCE E. ANDERSON,	:	95 REB 154, 95 REB 309
	:	96 REB 139, 96 REB 160
RESPONDENT.	:	97 REB 084
	:	

The parties in this matter agree and stipulate as follows:

1. This Stipulation is entered into for the purpose of resolving pending investigations relating to Joyce E. Anderson. These investigations involve the following numbered files of the Division of Enforcement:

94 REB 065; 95 REB 040; 95 REB 154, 95 REB 309, 96 REB 139, 96 REB 160 and 97 REB 084

JOYCE E. ANDERSON, herein call "Respondent", along with her Attorney Peter B. Kelly of Brennan, Steil, Basting & MacDougall, S.C., and the Division of Enforcement, Department of Regulation and Licensing, by its Attorney Charles J. Howden, consent to the resolution of these matters as they relate to Joyce E. Anderson pursuant to the terms of this stipulation and the attached Final Decision and Order.

2. Respondent understands that by the signing of this Stipulation she voluntarily and knowingly waives her rights, including: the right to a hearing on the allegations against her, at which time the State has the burden of proving those allegations; the right to confront and cross-examine the witnesses against her the right to call witnesses on her behalf and to compel their attendance by subpoena; the right to file objections to any proposed decision and to present briefs or oral arguments to the officials who are to render the final decision; the right to petition for rehearing; and all other applicable rights afforded to her under the United States Constitution, the Wisconsin Constitution, the Wisconsin Statutes, and the Wisconsin Administrative Code.

3. Respondent has had the opportunity to consult with legal counsel regarding this mater and the legal implications of the stipulation. Respondent is represented in these matters by Attorney Peter B. Kelly, P.O. Box 739, Monroe, Wisconsin 53566-0739.

4. Respondent voluntarily and knowingly waives the rights set forth in paragraph 2 above, on the condition that all of the provisions of this Stipulation are approved by the Board.

5. With respect to the attached Final Decision and Order, Respondent neither admits nor denies the facts as set forth in the Findings of Fact, however, she agrees that the Board may make

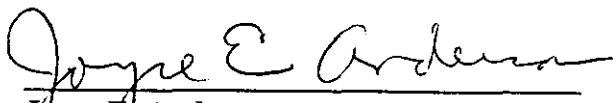
the Findings of Fact and may reach the conclusions set forth in the Conclusions of Law and enter the Order attached hereto.

6. If the terms of this Stipulation are not acceptable to the Board, the parties shall not be bound by the contents of this Stipulation or the proposed Final Decision and Order. The matter shall then be returned to the Division of Enforcement for further proceedings which may include the filing of a formal administrative disciplinary complaint. In the event that the Stipulation is not accepted by the Board the parties agree not to contend that the members of the Board have been prejudiced or biased in any manner by the consideration of this attempted resolution.

7. If the Board accepts the terms of this Stipulation, the parties to the Stipulation consent to the entry of the attached Final Decision and Order without further notice, pleading, appearance or consent of the parties.

8. Respondent agrees that Complainant's Attorney, Charles J. Howden, may appear at any meeting with the Board with respect to the Stipulation and that his appearance is limited to statements in support of the Stipulation and to answer any questions the Board may have regarding the Stipulation. Respondent waives any right she may have to have notice of that meeting.

9. Respondent agrees that the board advisor assigned to this case may attend and participate in any meeting of the Board related to this Stipulation and may vote on whether or not to approve this Stipulation.



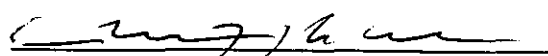
Joyce E. Anderson,
Respondent

3/24/98

Date

Peter B. Kelly, Attorney
for Respondent

Date



Charles J. Howden, Attorney
Division of Enforcement

3/25/98

Date

Department of Regulation & Licensing

State of Wisconsin

P.O. Box 8935, Madison, WI 53708-8935

(608)

TTY# (608) 267-2416, hearing or speech
TRS# 1-800-947-3529, impaired only

GUIDELINES FOR PAYMENT OF COSTS AND/OR FORFEITURES

On March 26, 1998, the Real Estate Board
took disciplinary action against your license. Part of the discipline was an assessment of costs and/or a
forfeiture.

The amount of the costs assessed is: \$1,000.00 Case #: LS9803263REB

The amount of the forfeiture is: _____ Case # _____

Please submit a check or a money order in the amount of \$ 1,000.00

The costs and/or forfeitures are due: March 26, 1999

NAME: Joyce E. Anderson LICENSE NUMBER: 31263

STREET ADDRESS: 1819 11th Avenue

CITY: Monroe STATE: WI ZIP CODE: 53566

Check whether the payment is for costs or for a forfeiture or both:

☒ COSTS ☐ FORFEITURE

Check whether the payment is for an individual license or an establishment license:

☒ INDIVIDUAL ☐ ESTABLISHMENT

If a payment plan has been established, the amount due monthly is:

Make checks payable to:

DEPARTMENT OF REGULATION AND LICENSING
1400 E. WASHINGTON AVE., ROOM 141
P.O. BOX 8935
MADISON, WI 53708-8935

#2145 (Rev. 9/96)

Ch. 440.22, Stats.

G\BDLS\FM2145.DOC

For Receipting Use Only

Committed to Equal Opportunity in Employment and Licensing+

STATE OF WISCONSIN
DEPARTMENT OF REGULATION AND LICENSING
BEFORE THE REAL ESTATE BOARD

In the Matter of the Disciplinary Proceedings Against

Joyce E. Anderson,

AFFIDAVIT OF MAILING

Respondent.

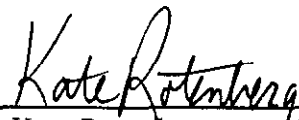
STATE OF WISCONSIN)
)
COUNTY OF DANE)

I, Kate Rotenberg, having been duly sworn on oath, state the following to be true and correct based on my personal knowledge:

1. I am employed by the Wisconsin Department of Regulation and Licensing.

2. On March 30, 1998, I served the Final Decision and Order dated March 26, 1998, Guidelines for Payment of Costs and/or Forfeitures, and Guidelines for Brokers whose Licenses have been Suspended or Revoked, LS9803263REB, upon the Respondent Joyce E. Anderson's attorney by enclosing true and accurate copies of the above-described documents in an envelope properly stamped and addressed to the above-named Respondent's attorney and placing the envelope in the State of Wisconsin mail system to be mailed by the United States Post Office by certified mail. The certified mail receipt number on the envelope is P 221 159 371.

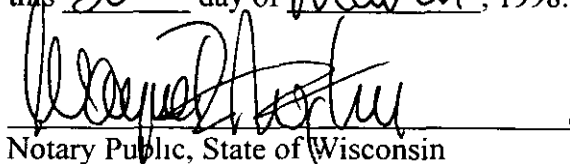
Peter B. Kelly, Attorney
1628 11th Street
P.O. Box 739
Monroe WI 53566-0739



Kate Rotenberg
Department of Regulation and Licensing
Office of Legal Counsel

Subscribed and sworn to before me

this 30th day of March, 1998.



Notary Public, State of Wisconsin

My commission is permanent.

NOTICE OF RIGHTS OF APPEAL

TO: PETER B KELLY ATTY

You have been issued a Final Decision and Order. For purposes of service the date of mailing of this Final Decision and Order is 3/30/98. Your rights to request a rehearing and/or judicial review are summarized below and set forth fully in the statutes reprinted on the reverse side.

A. REHEARING.

Any person aggrieved by this order may file a written petition for rehearing within 20 days after service of this order, as provided in section 227.49 of the Wisconsin Statutes. The 20 day period commences on the day of personal service or the date of mailing of this decision. The date of mailing of this Final Decision is shown above.

A petition for rehearing should name as respondent and be filed with the party identified below.

A petition for rehearing shall specify in detail the grounds for relief sought and supporting authorities. Rehearing will be granted only on the basis of some material error of law, material error of fact, or new evidence sufficiently strong to reverse or modify the Order which could not have been previously discovered by due diligence. The agency may order a rehearing or enter an order disposing of the petition without a hearing. If the agency does not enter an order disposing of the petition within 30 days of the filing of the petition, the petition shall be deemed to have been denied at the end of the 30 day period.

A petition for rehearing is not a prerequisite for judicial review.

B. JUDICIAL REVIEW.

Any person aggrieved by this decision may petition for judicial review as specified in section 227.53, Wisconsin Statutes (copy on reverse side). The petition for judicial review must be filed in circuit court where the petitioner resides, except if the petitioner is a non-resident of the state, the proceedings shall be in the circuit court for Dane County. The petition should name as the respondent the Department, Board, Examining Board, or Affiliated Credentialing Board which issued the Final Decision and Order. A copy of the petition for judicial review must also be served upon the respondent at the address listed below.

A petition for judicial review must be served personally or by certified mail on the respondent and filed with the court within 30 days after service of the Final Decision and Order if there is no petition for rehearing, or within 30 days after service of the order finally disposing of a petition for rehearing, or within 30 days after the final disposition by operation of law of any petition for rehearing. Courts have held that the right to judicial review of administrative agency decisions is dependent upon strict compliance with the requirements of sec. 227.53 (1) (a), Stats. This statute requires, among other things, that a petition for review be served upon the agency and be filed with the clerk of the circuit court within the applicable thirty day period.

The 30 day period for serving and filing a petition for judicial review commences on the day after personal service or mailing of the Final Decision and Order by the agency, or, if a petition for rehearing has been timely filed, the day after personal service or mailing of a final decision or disposition by the agency of the petition for rehearing, or the day after the final disposition by operation of the law of a petition for rehearing. The date of mailing of this Final Decision and Order is shown above.

The petition shall state the nature of the petitioner's interest, the facts showing that the petitioner is a person aggrieved by the decision, and the grounds specified in section 227.57, Wisconsin Statutes, upon which the petitioner contends that the decision should be reversed or modified. The petition shall be entitled in the name of the person serving it as Petitioner and the Respondent as described below.

SERVE PETITION FOR REHEARING OR JUDICIAL REVIEW ON:

STATE OF WISCONSIN REAL ESTATE BOARD

1400 East Washington Avenue

P.O. Box 8935

Madison WI 53708-8935